

REPORT
OF THE
Attorney General
OF THE
State of Florida

From January 1, 1919, to December 31, 1920

VAN C. SWEARINGEN
Attorney General



TALLAHASSEE, FLORIDA

1921

T. J. APPELYARD, PRINTER, TALLAHASSEE, FLORIDA

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LIST OF THOSE WHO HAVE HELD THE OFFICE OF ATTORNEY GENERAL OF FLORIDA ---

| | |
|---------------------------|-----------|
| JOSEPHUS BRANCH | 1845-1846 |
| AUGUSTUS E. MAXWELL..... | 1846-1848 |
| JAMES T. ARCHER..... | 1848-1848 |
| DAVID P. HOGUE..... | 1848-1853 |
| MARION D. PAPPY..... | 1853-1860 |
| JOHN B. GALBRAITH..... | 1860-1868 |
| JAS. D. WESTCOTT, JR..... | 1868-186- |
| A. R. MEEK..... | 186--18— |
| SHERMAN CONANT | 18—1871 |
| J. B. C. DREW..... | 1871-1872 |
| H. BISBEE, JR..... | 1872-1872 |
| J. B. C. EUNNONS..... | 1872-1873 |
| WILLIAM A. COCKE..... | 1873-1877 |
| GEORGE P. RAINEY..... | 1877-1885 |
| C. M. COOPER..... | 1885-1889 |
| WILLIAM B. LAMAR..... | 1889-1901 |
| JAMES B. WHITFIELD..... | 1901-1904 |
| W. H. ELLIS..... | 1904-1909 |
| PARK TRAMMELL | 1909-1913 |
| THOMAS F. WEST..... | 1913-1917 |
| VAN C. SWEARINGEN..... | 1917-1920 |

STATE LAW DEPARTMENT.

VAN C. SWEARINGEN.....Attorney General
WORTH W. TRAMMELL.....Assistant Attorney General
D. STUART GILLIS.....Assistant Attorney General
MISS ALLIS YAWN.....Law Clerk
MISS CORRIE LOWE.....Stenographer

REPORT OF ATTORNEY GENERAL

STATE OF FLORIDA

ATTORNEY GENERAL'S OFFICE.

Tallahassee, December 31, 1920.

HONORABLE SIDNEY J. CATTS,
Governor of Florida.

SIR:

In obedience to the constitutional mandate directing each officer of the Executive Department to make full reports of his official acts, of the receipts and expenditures of his office and of the requirements of the same, to the Governor at regular periods, or whenever the Governor shall require it, and in compliance with long established custom by which such reports are made to cover the two calendar years immediately preceding each regular session of the legislature, I have the honor to submit herewith the report of this office covering the period from January 1, 1919, to December 31, 1920.

GENERAL SCOPE OF DUTIES.

The constitutional duties of the Attorney General are prescribed by Section 22 of Article IV of the Constitution, as follows:

"The Attorney General shall be the legal adviser of the Governor, and of each of the officers of the executive department, and shall perform such other legal duties as may be prescribed by law. He shall be reporter for the Supreme Court."

The duties generally prescribed by statute are found in Section 89 of the General Statutes, as follows:

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"The Attorney General shall reside at the seat of government, and shall keep his office in a room in the Capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall, on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of this State; he shall appear in and attend to such suits or prosecutions in any other of the courts of this State, or in any courts of any other State, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions, reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof."

The Attorney General is also required by numerous statutes to perform other duties, and he is required by common law to exercise certain powers and perform other duties of great public importance.

SERVICE ON BOARDS.

A great deal of the very important business of the State is performed and handled by Boards and Commissions, created by the constitution and by statutes, which con-

sumes a considerable portion of the time of the State Officials; among these Boards and Commissions are the following, all of which the Attorney General is a member:

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS.

The membership of this Board consists of the Governor and his entire cabinet, which includes the Attorney General, State Treasurer, Secretary of State, Superintendent of Public Instruction, and the Commissioner of Agriculture. This Board has the management and control of all the State Institutions, which includes the Industrial School for Boys, the Industrial School for Girls, the State Hospital, the State Prison Farm, and all State convicts. Necessarily the control and supervision of these institutions places upon this Board innumerable important duties, and the Attorney General being the legal adviser of this Board makes it necessary for him to not only act as a member of the Board but also to do all the legal work in connection therewith.

STATE BOARD OF EDUCATION.

The membership of this Board consists of the Governor, Secretary of State, Attorney General, State Treasurer, and State Superintendent of Public Instruction. This Board is charged with the duty of taking charge of and handling all the lands held by the State for educational purposes; to direct and manage and provide for the safe keeping of all the educational funds of the State; and also many other duties in connection with the general educational system. The Attorney General is the legal adviser of this Board as well as a member thereof.

STATE VOCATIONAL EDUCATIONAL BOARD.

Under the provisions of Chapter 7376, Acts of 1917, the Legislature accepted the provisions of the Act of Congress Approved February 23, 1917, entitled "An Act to Provide for the Promotion of Vocational Education; to Provide for the Co-operation with the State in the Promotion of such Education or Agriculture and the Trades and Industries; to Provide for Co-operation with the States in the Preparation of Teachers of Vocational Subjects; and to Appropriate Money and Regulate its Expenditures." Under the provisions of this law the States receives from the United States about Eighteen Thousand Dollars annually to aid in carrying on this work. The State Board of Education was designated as the State Vocational Educational Board, and upon it was placed the duty of designating the schools at which would be taught vocational education in agriculture and the trades and industries, also the carrying out of the provisions of this law. The work of this Board has consumed considerable time.

STATE BOARD OF PARDONS.

This Board is composed of the Governor, Secretary of State, Attorney General, Comptroller and Commissioner of Agriculture. Under the Constitution this Board may remit fines and forfeitures, commute punishment, grant pardons in all cases except treason and impeachment. With a prison population of some 1,200 there are many among them who feel that the powers of this Board should be exercised in their behalf. Consequently a large number of applications for pardon are made to this Board, and as each case is carefully considered much time is consumed in these investigations.

TRUSTEES OF THE INTERNAL IMPROVEMENT
FUND AND STATE BOARD OF DRAINAGE
COMMISSIONERS.

These two Boards are composed of the same officials, and consist of the Governor, Attorney General, Comptroller, State Treasurer and Commissioner of Agriculture. The Trustees of the Internal Improvement Fund are vested with the title to and have the exclusive management and control of all lands belonging to the State, which were acquired by Acts of Congress of March 3, 1854, and September 28, 1850, which at this time amounts to approximately ————— acres. Upon the Board of Drainage Commissioners is laid the duty of establishing a system of canals, drains, levees, dikes and reservoirs to drain and reclaim the swamp and overflowed lands within the drainage districts. Much time is consumed by the Attorney General and other members of the Boards in looking after matters concerning both of these Boards.

STATE CANVASSING BOARD.

This Board is required to canvass the returns of all general elections for State officers. Its membership consists of the Secretary of State, Comptroller and Attorney General.

In addition to the duties laid upon the Attorney General, as a member of the above boards, he is required to act with the Comptroller in passing upon questions arising under the provisions of Chapter 6422, Laws of Florida, commonly called the "Blue Sky Lay;" with the Comptroller and State Treasurer in passing upon the value of securities deposited by trust companies under the provisions of Chapter 6155, Laws of Florida; with

the Comptroller and State Treasurer in matters of assessing railroad properties for taxation; and with the Commissioner of Agriculture in passing upon questions arising under the Provisions of the "Pure Food and Drugs Act."

OFFICIAL OPINIONS.

During the period covered by this report I have, as required by the Constitution and statutes of this State, from time to time, as requested by the administrative officers of the Executive Department of the State government, advised them and prepared written opinions for them upon various subjects touching their official duties and powers. Copies of all these opinions are preserved in this office, and a number of them are incorporated in this report for the convenient use of such officers and others interested in the subjects covered by them.

In addition to these official opinions, although not expressly required by law to do so, but in order to assist in a proper interpretation and application of the statutes pertaining to their powers and duties, I have, when requested, prepared written opinions for other State officers, State boards and commissions, including the State Auditor, Hotel Commission, State Labor Inspector, State Board of Control and State Board of Health. Some of these opinions are also incorporated in this report.

In addition to these written opinions, the Attorney General is frequently called into consultation by other officers for legal advice relative to the various questions arising in their respective departments, and no small part of the duties of the office is that devoted to the investigations which are necessary to intelligently and properly advise in such cases. Necessarily much time is devoted to this work, but because of its character no record of it can be made.

UNOFFICIAL OPINIONS.

In the report of this office immediately preceding this one the following statement on this subject appears and it may be repeated here:

"This office is not charged with the duty of advising county, municipal and district officers, but, as a matter of courtesy to those making inquiry, and with a view to assisting, when possible, to a uniform administration of the laws regulating the conduct and prescribing the powers and duties of such officers, I have, upon requests therefor, written a large number of what may be termed unofficial opinions. A number of these communications indicating the character and scope of the inquiries are also incorporated in this report."

All such inquiries are replied to as promptly as the official duties of the office will permit, but it will be understood, of course, that official matters must have first consideration.

BOND ISSUES EXAMINED FOR THE STATE
BOARD OF EDUCATION.

In pursuance of the policy of the State Board of Education to invest such of the State school funds as are available for this purpose in securities issued by counties, municipalities and school and road districts in this State, it has been the duty of this office to examine a number of transcripts of the records of the proceedings had in the issuance of such bonds for the purpose of determining whether or not they were valid and enforceable obligations of the counties, municipalities or districts. Such issues as are purchased are held by the State Treasurer.

STATE STATUTES TESTED IN THE SUPREME COURT.

During the period covered by this report the constitutional validity of a number of State statutes upon important subjects have been challenged and tested by appropriate court proceedings.

CIVIL CASES.

Under the title Schedule of Civil Cases report is made of the civil cases which have had attention.

CRIMINAL CASES.

The Attorney General represents the State in the Supreme Court of the State in all criminal cases and in all habeas corpus proceedings.

Briefs on behalf of the State have been prepared and filed in the Supreme Court in all such cases and oral arguments on behalf of the State have been made in all of them in which oral arguments were requested and made by counsel for the plaintiffs in error.

PUBLISHING ACTS AND RESOLUTIONS OF THE STATE LEGISLATURE.

The Acts and Resolutions of the Legislature of this State for the extra session of 1918 and the regular session of 1919 were published, with marginal abstracts, as required by law, under the direction of this office.

An index to these laws and an index to the Journals of each branch of the Legislature were also prepared under the direction of this office, the index to the Journals having been prepared as provided by Chapter 6436, Acts of 1913, Laws of Florida.

REPORTER FOR THE SUPREME COURT.

The Attorney General is the Reporter for the Supreme Court.

During the period covered by this report four volumes of the opinions of the court have been published, namely, 76, 77, 78, and Vol. 79 is now in the hands of the printer.

A great degree of care must be exercised in this work, as the opinion filed by the court is expected to be accurately reproduced in the reports.

An index-digest and a table of cases are also prepared in this office as a part of each volume of these reports.

Respectfully submitted,

VAN C. SWEARINGEN,
Attorney General.

APPROPRIATIONS AND EXPENDITURES

Appropriations.

First six months, 1919—

| | |
|---------------------------|-------------|
| Assistant | \$ 1,250.00 |
| Assistant | 1,250.00 |
| Clerk | 600.00 |
| Stenographer | 540.00 |
| Incidental Expenses | 350.00 |
| Purchase of Books | 250.00 |

For last six months, 1919—

| | |
|---------------------------|----------|
| Assistant | 1,500.00 |
| Assistant | 1,500.00 |
| Clerk | 750.00 |
| Stenographer | 600.00 |
| Incidental Expenses | 250.00 |
| Purchase of Books | 250.00 |

For the year 1920—

| | |
|---------------------------|----------|
| Assistant | 3,000.00 |
| Assistant | 3,000.00 |
| Clerk | 1,500.00 |
| Stenographer | 1,200.00 |
| Incidental Expenses | 500.00 |
| Purchase of Books | 500.00 |

Expenditures.

| | |
|-------------------------------------|-------------|
| Assistant for years 1919-1920 | \$ 5,750.00 |
| Assistant for years 1919-1920 | 5,750.00 |
| Clerk for years 1919-1920 | 2,850.00 |

| | |
|---|----------|
| Stenographer for years 1919-1920 | 2,340.00 |
| Incidental Expenses for years 1919-1920.. | |
| Purchase of Books for years 1919-1920... | 1,001.30 |

ITEMIZED STATEMENT

*Of Expenditures from the Appropriation for the Purchase
of Books.*

1919.

| | |
|---|-------|
| January—Little, Brown & Co., Wharton's Criminal Procedure with forms, 1918....\$ | 30.00 |
| Lawyers' Co-operative Pub. Co., R. C. L., Vol. 22, L. R. A., 1918-D, U. S. Advance Sheets 1918 Term..... | 13.50 |
| Bancroft-Whitney Co., installment on con- tract | 30.00 |
| West Publishing Co., So. Rep., Vol 78, Amr. Dig. (K. N. S.), Vol 4A, Fed. Rep., Vol. 249, Pac. Rep., Vol. 173, 2 Dec. Di- gest, Vol. 4, installment on contract, 10/31/18 | 33.50 |
| February—West Publishing Co., Fed. Rep., Vols. 250 and 251, Pac. Rep., Vol. 174, N. W. Rep., Vol. 168, U. S. Compiled Statute, S. E. Rep., Vol. 96, installment on contract 10/13/16, installment on con- tract 10/19/17 | 94.10 |
| The American Issue Pub. Co., Federal and State laws | 5.00 |
| April—Lawyers' Co-operative Pub. Co., L. R. A., 1918E, 1918 F, R. C. L., Vol. 23..... | 16.50 |
| Bancroft-Whitney Co., quarterly install- ment on contract | 30.00 |
| July—Little, Brown & Co., Story Equity Jur- is., 3 Vols., Abbott's Trial Evidence, Thompson's Title to Real Property..... | 52.50 |

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|---|--------|
| West Publishing Co., final installment on contract 10/13/16, installment due April, 1919, on contract 10/19/17 | 66.60 |
| Bancroft-Whitney Co., final installment on contract for Ann. Cas..... | 23.00 |
| L. D. Powell Co., Standard Ency. Procedure, Vols. 20 and 21..... | 12.00 |
| West Publishing Co., bal. acct. on contract, Oct. 31, 1918, N. W. Rep., Vol. 167, Second Dec. Digest, Vol. 5, Fed. Rep., Vol. 252, So. Rep., Vol. 79, Pac. Rep., Vols. 175-176, N. E. Rep., Vol. 120, Second Dec. Digest, Vol. 6..... | 55.00 |
| American Law Book Co., annotations for Corpus Juris., 1918, Corpus Juris., Vols. 17 and 18 | 23.00 |
| August—American Law Book Co., Annotation for Corpus Juris., 1919..... | 8.00 |
| October—The Banks Law Pub. Co., U. S. Rep., Vol. 248 | 3.00 |
| Lawyers' Co-operative Pub. Co., Ruling Case Law, Vol. 24..... | 6.50 |
| <hr/> | |
| Total amount expended 1919.....\$ | 502.20 |

1920.

| | |
|---|-------|
| January—Lawyers' Co-operative Pub. Co., U. S. Advance Sheets, 1919.....\$ | 2.00 |
| Burdette J. Smith & Co., Elliott's Blue Sky Law of U. S. | 7.50 |
| L. D. Powell Co., Standard Ency. Proc., Vol. 22 | 6.00 |
| Bancroft-Whitney Co., Amr. Law Rep., Vols. 1, 2 and 3, Am. Cas. Digest 18.... | 23.50 |

| | |
|---|--------|
| West Publishing Co., installment due October, 1919, on contract 10/19/17, Fed. Rep., Vols. 253, 254, 255, 257, 258, N. W. Rep., Vols. 169, 170, 171, 173, N. E. Rep., Vols. 121, 122 and 123, S. E. Rep., Vols. 97, 98, 99, Pac. Rep., Vols. 177, 178, 179, 182, Second Dec. Digest, Vols. 7, 8, 10, Amr. Digest, Vol. 5A, So. Rep., Vol. 80, So. Digest, Vols. 76 to 80..... | 139.50 |
| West Publishing Co., Pac. Rep., Vols. 180, 181, So. Rep., Vol. 81, Fed. Rep. 256, N. W. Rep. 172, Amr. Digest, Vol. 6A, Second Dec. Digest, Vol. 9..... | 32.25 |
| West Publishing Co., installment due July, 1919, on contract 10/19/17, installment due January, 1920, on contract 10/19/17 | 66.85 |
| March—L. D. Powell Co., First Permanent Supp. Evidence-Ency. | 7.00 |
| Lawyers' Co-operative Pub. Co., R. C. L., Vol. 25 | 6.50 |
| American Law Book Co., Corpus Juris., Vol. 14 | 7.50 |
| Bancroft-Whitney Co., Amr. Law Rep. Ann., Vol. 4, Annual Index Digest..... | 10.00 |
| April—American Law Book Co., Corpus Juris., Vol. 19 | 7.50 |
| Little, Brown & Co., Wrightington Unincorporated Associations, Elliott's Blue Sky Law | 13.50 |
| West Publishing Co., final installment on contract 10/19/17, Pac. Rep., Vols. 183, 184, So. Rep., Vol. 82, Amr. Digest, Vol. 7A, S. E. Rep., Vol. 100, N. W. Rep., Vol. 174, N. E. Rep., Vol. 124, Fed. Rep., Vols. 259 and 260 | 64.25 |

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|---|-------------|
| June—Bancroft-Whitney Company, Amr. Law Rep. Ann., Vol. 5..... | 7.50 |
| The Banks Law Pub. Co., U. S. Rep., Vols. 249 and 250 | 6.00 |
| West Publishing Co., Pac. Rep., Vols. 185, 186, Second Dec. Digest, Vol. 11, N. E. Rep., Vol. 125, S. E. Rep., Vol. 101, N. W. Rep., Vol. 175 | 33.25 |
| September—L. D. Powell Co., Standard Ency. of Proc., Vol. 23..... | 6.00 |
| The Frank Shepard Co., Subscription Shepard's Florida Citations | 6.00 |
| Bancroft-Whitney Co., Amr. Law Rep. Ann., Vol. 6 | 7.50 |
| American Law Book Co., Annual Annotations for 1920, Corpus Juris., Vols. 20 and 22 | 23.00 |
| West Publishing Co., Sou. Rep., Vol. 83, Pac. Rep., Vol. 187, Second Dec. Digest, Vol. 12 | 16.00 |
| <hr/> | |
| Total amount expended 1920..... | 499.10 |
| Amount brought forward January 1, 1919....\$ | 3.39 |
| Appropriation for first six months, 1919..... | 250.00 |
| Appropriations for last six months, 1919..... | 250.00 |
| Appropriation for year 1920..... | 500.00 |
| <hr/> | |
| Total in fund | \$ 1,003.39 |
| Expended, as above itemized, during the year 1919 | 502.20 |
| Expended, as above itemized, during the year 1920 | 499.10 |
| <hr/> | |
| Total amount expended | \$ 1,001.30 |
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| Balance to credit of fund..... | \$ 2.09 |

ITEMIZED STATEMENT

*Of Expenditures of Attorney General from Appropriation
for Incidental Expenses.*

1919.

| | |
|---|---------|
| January—T. J. Appleyard, printing 500 forms for Index | \$ 5.50 |
| Western Union Tel. Co., messages..... | 8.47 |
| Frederic B. Crossley, subscription to Journal of American Institute Criminal Law and Criminology | 3.06 |
| Worth Trammell, expenses trip DeFuniak Springs in re. ex parte. Morasso, enforce- ment of Chapter 7735 | 11.33 |
| Van C. Swearingen, expense trip to Jack- sonville in re. State v. Coast Line Canal & Transportation Co. | 14.50 |
| February—Geo. D. Barnard Co., Liberty Par- cel Post Scale | 4.43 |
| Western Union Tel. Co., messages | 7.45 |
| Geo. I. Davis, Postmaster, first payment on 3,000 No. 5 envelopes | 4.80 |
| G. T. Whitfield, cler, costs in re. State ex rel. Attorney General v. D. L. Jones | 12.00 |
| D. R. Cox Furniture Co., filing cabinet.... | 20.00 |
| Geo. I. Davis, Postmaster, stamps | 10.00 |
| T. J. Appleyard, 200 copies of brief Morasso v. Van Pelt | (44.20 |
| Western Union Tel. Co., messages | 5.50 |
| Van C. Swearingen, expense inspection trip in re. State v. Florida Coast Line Canal & Transportation Co. | 58.08 |
| Southern Tel. & Const. Co., message to Jack- sonville | 1.00 |
| March—Southern Tel. & Const. Co., messages.. | 1.30 |

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| Geo. I. Davis, Postmaster, balance on 3,000 No. 5 envelopes | 90.00 |
| Van C. Swearingen, expense trip to Jacksonville in re. Florida Coast Line Canal & Transportation Co. | 18.10 |
| Geo. I. Davis, Postmaster, stamps for sending out Biennial Report | 20.00 |
| April—T. J. Appleyard, 250 clasp envelopes.. | 2.50 |
| T. J. Appleyard, printing 300 copies of recommendations to Legislature | 17.00 |
| Southern Tel. & Const. Co., message | .25 |
| J. C. Van Pelt, Sheriff, serving notice in re. Boyington v. State | 1.00 |
| Western Union Tel. Co., messages | 3.93 |
| P. C. Eldred, clerk, certified copy final decree case Consolidated Naval Stores Co. v. State | 2.00 |
| Geo. I. Davis, Postmaster, stamps | 7.78 |
| May—Western Union Tel. Co., messages | 8.26 |
| T. J. Appleyard, 2,000 sheets onion skin paper | 3.00 |
| Southern Tel. & Const. Co., message | .25 |
| June—Southern Tel. & Const. Co., messages .. | 1.00 |
| Arthur S. Benson, cler, copy decision involving question of invoking referendum upon legislative resolution ratifying proposed amendment to U. S. Constitution.. | 2.50 |
| Western Union Tel. Co., messages | 6.82 |
| Van C. Swearingen, expense trip Jacksonville in re. State v. Florida Coast Line Canal & Transportation Co. | 15.15 |
| Underwood Typewriter Co., 1 cylinder for typewriter | 2.50 |
| Clerk Supreme Court State of Washington, copy opinion in re. intoxicating liquors.. | 9.50 |
| Geo. I. Davis, Postmaster, first payment on 3,000 No. 5 envelopes | 4.80 |

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| July—One clock for office | 13.00 |
| Geo. D. Barnard Co., 12 boxes paper fasteners and 6 boxes Hotchkiss staples | 5.56 |
| Western Union Tel. Co., messages | 6.13 |
| Columbia Law Review, subscription to.... | 2.50 |
| Van C. Swearingen, expense trip Jacksonville investigation in re. State v. Florida Coast Line & Transportation Co. | 19.70 |
| Geo. D. Barnard & Co., 2 boxes Triumph fasteners and 2 dozen scratch pads | 6.36 |
| Geo. D. Barnard Co., 1 dozen Faber stenographer's pencils | .71 |
| The Frank Shepard Co., Shepard's Citations | 4.50 |
| August—Western Union Tel. Co., messages.. | 5.74 |
| Van C. Swearingen, expense trip Jacksonville to take testimony case of State v. Florida Coast Line & Transportation Co. | 20.65 |
| Van C. Swearingen, expense trip Clearwater in re. prosecution Pinellas County violators Plant Board Act | 35.59 |
| Southern Tel. & Const. Co., messages | .95 |
| V. I. Hancock, 1 Drop-a-Line copyholder.. | 6.00 |
| September—Western Union Tel. Co., messages | 12.19 |
| Southern Tel. & Const. Co., messages | 1.40 |
| T. J. Appleyard, 250 manila envelopes and 5,000 second sheets | 11.00 |
| Central Law Journal, subscription to.... | 5.00 |
| October—Western Union Tel. Co., messages.. | 2.50 |
| Southern Tel. & Const. Co., message | .30 |
| The H. & W. B. Drew Co., 500 manuscript covers | 12.50 |
| November—American Railway Express Co., express on package | .43 |
| Southern Tel. & Const. Co., messages | 4.10 |
| Western Union Tel. Co., messages | 12.61 |

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| Van C. Swearingen, expense trip through East Coast Canal in re. State v. Florida Coast Line Canal & Transportation Co... | 33.35 |
| Van C. Swearingen, expense trip Jacksonville in re. hearing in case State v. Florida Coast Line Canal & Transportation Co. . . | 14.30 |
| Geo. I. Davis, Postmaster, stamps | 14.00 |
| Van C. Swearingen, expense trip to inspect site for Hospital for Feeble Minded and Epileptics | 37.87 |
| George Banks, drayage on 3 boxes court files Rast case shipped to clerk at Jacksonville | 1.00 |
| December—H. R. Kaufman, repair work on 2 Underwood typewriters | 20.75 |
| T. J. Appleyard, changing name on letterheads | 8.35 |
| Sou. Tel. & Const. Co., messages | 2.00 |
| Western Union Tel. Co., messages | 10.05 |
| Van C. Swearingen, expense trip Jacksonville in re. State v. Coast Line Canal & Transportation Co. | 24.65 |
| W. C. Dixon, drayage on desk | .50 |
| Total amount expended 1919 \$ | 784.19 |

 1920.

| | |
|---|-------|
| January—Geo. D. Barnard & Co., 5,000 embossed letterheads and express \$ | 48.00 |
| Geo. D. Barnard & Co., 1 model A. T. W. desk and freight | 75.38 |
| T. J. Appleyard, 2,000 second sheets, legal.. | 3.00 |
| Western Union Tel. Co., messages | 4.89 |
| F. C. Elliott, chief drainage engineer, expense trip Jacksonville in re. State v. Coast Line Canal & Transportation Co... | 21.02 |

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|--|----------|
| F. C. Elliott, Chief Drainage Engineer, expense trip, Miami in re. inspection Coast Line Canal | \$ 59.42 |
| Southern Tel. & Const. Co., messages..... | 2.75 |
| Geo. D. Barnard, stationery and express... | 12.28 |
| February—Hill's Book Store ink \$1.00, scratch pads \$1.75 | 2.75 |
| Geo. I. Davis, Postmaster, stamps..... | 14.00 |
| Western Union Tel. Co., messages..... | 7.16 |
| March—Southern Tel. & Const. Co., messages | 2.40 |
| Cox Furniture Co., filing cabinet..... | 48.00 |
| Dixon Office Supply Co., letter transfer folders | 8.10 |
| Geo. D. Barnard Co., 2 dozen Faber No. 6379 pencils | 1.28 |
| American Railway Express Co., express packages | .94 |
| Western Union Tel. Co., messages..... | 5.62 |
| Jasmine Ink Corporation, 1 quart ink.... | 1.50 |
| April—Western Union Tel. Co., messages.... | 4.77 |
| Southern Tel. & Const. Co., messages..... | 2.10 |
| Geo. I. Davis, Postmaster, stamps..... | 15.00 |
| Amr. Ry. Express Co., express package.... | .56 |
| May—Western Union Tel. Co., messages.... | 5.00 |
| Geo. D. Barnard Co., 2 dozen scratch pads. | 7.59 |
| Southern Tel. & Const. Co., messages.... | 4.30 |
| Geo. I. Davis, Postmaster, first payment on 5,000 stamped envelopes..... | 8.00 |
| June—Western Union Telegraph Co., messages | 1.62 |
| Southern Tel. & Const. Co., messages..... | 3.30 |
| July—Western Union Telegraph Co., messages | .45 |
| Van C. Swearingen, expense trip Jacksonville in re. King Lumber Co. v. Board of Control | 18.90 |
| Williams Hardware Co., 1 pair scissors.... | 1.50 |

| | |
|--|--------|
| Geo. I. Davis, Postmaster, balance on 5,000 stamped envelopes | 100.60 |
| August—Southern Tel. & Const. Co., messages | 1.15 |
| American Railway Express Co., express on package | .45 |
| Western Union Telegraph Co., messages... | 2.24 |
| Geo. I. Davis, Postmaster, stamps..... | 15.00 |
| Glen Terrell, expense trip Jacksonville in re. State v. Coast Line Canal & Transportation Co. | 28.36 |
| September—Van C. Swearingen, expense trip St. Louis to attend Convention of Attorney Generals | 130.00 |
| Western Union Telegraph Co., messages... | 4.93 |
| Southern Tel. & Const. Co. | 3.65 |
| American Railway Express Co., express on package | .29 |
| Geo. I. Davis, Postmaster, 2,500 envelopes No. 5 | 56.10 |
| Van C. Swearingen, expense trip Tampa to make investigation violation Chapter 6933 | 49.77 |
| October—Southern Tel. & Const. Co., messages | 2.15 |
| Hill's Book Store, office supplies..... | 5.35 |
| Western Union Telegraph Co., messages... | 14.20 |
| Van C. Swearingen, expense trip Tampa to make investigation violation Chapter 6933 | 34.11 |
| November—D. R. Cox Furniture Co., 1 bottle O-Cedar Polish | .50 |
| F. C. Elliott, Chief Drainage Engineer, expense trip Jacksonville in re. hearing case of State v. Coast Line Canal & Transportation Co. | 19.55 |
| Western Union Telegraph Co., messages... | 4.00 |

| | |
|--|----------|
| December—Western Union Telegraph Co., messages | 1.41 |
| H. R. Kaufman, bottle of ink..... | 1.75 |
| S. M. Mathews, Special Master, costs to date in re. State ex rel. Van C. Swearin- gen v. Florida East Coast Canal & Trans- portation Co. | 38.00 |
| Southern Tel. & Const. Co., messages..... | 3.00 |
| Dowling-Hutchinson & Pattison, copy testi- mony case State ex rel. v. Florida East Coast Canal & Transportation Co. | 34.65 |
| W. P. Culbreath, Clerk, costs case State ex rel. v. Arango et al. | 7.96 |
| A. J. White, Sheriff, costs case State ex rel. v. Arango et al. | 13.50 |
| R. F. Johnson, Court Reporter, copies transcript of Record case State ex rel. v. Arango et al. | 36.60 |
| Total amount expended 1920.....\$ | 1,000.85 |

COMPILED STATEMENT OF INCIDENTAL
EXPENSE ACCOUNT.

| | | |
|-------------------------------------|----|------------|
| Amount brought forward January 1, | | |
| 1919 | \$ | 994.63 |
| Appropriation for first six months, | | |
| 1919 | | 350.00 |
| Appropriation for last six months, | | |
| 1919 | | 250.00 |
| Appropriation for year 1920..... | | 500.00 |
| | | <hr/> |
| Total amount in fund 1919, 1920 | | \$2,094.63 |
| Expended, as above itemized, during | | |
| year 1919 | \$ | 784.19 |
| Expended, as above itemized, during | | |
| year 1920 | | 1,000.85 |
| | | <hr/> |
| Total amount expended 1919, | | |
| 1920 | | \$1,785.04 |
| | | <hr/> |
| Balance to credit of fund..... | | \$ 309.59 |

SCHEDULE OF CIVIL CASES

COMMON LAW.

*In the Circuit Court of the Eighth Judicial Circuit,
Alachua County, Florida.*

King Lumber Co., Plaintiff,

v.

State Board of Control, Defendant.

This is a suit brought by the plaintiff against the defendant to recover a balance alleged to be due by the defendant to the plaintiff on account of a contract for the construction of a building by the plaintiff for the defendant on the grounds of the University of Florida at Gainesville. This case is now pending in the court on the demurrer to plaintiff's replication.

*In the Circuit Court of the Second Judicial Circuit,
Leon County, Florida.*

*Park Trammell et al., as the Board
of Commissioners for State Institutions,
Plaintiffs,*

v.

*DeLeon Naval Stores Company,
a Corporation, et al., Defendants.*

This is a suit brought in the Circuit Court of Leon County against the DeLeon Naval Stores Company, a corporation, lessee of State prisoners, and its bondsmen for a balance due by it on account of its contract with the Board of Commissioners of State Institutions for the lease of such prisoners. The amount due was \$6,060.74.

The executors of the estate of J. B. Conrad, deceased, one of the sureties on the bond of this defendant, have paid to the Board the sum of \$2,000.00, the amount of the obligation of this decedent on the bond. This case is now pending before the court.

CHANCERY SUITS. .

In the Supreme Court, State of Florida.

*Ernest Amos, Comptroller,
Appellant,*

v.

M. C. Boley, Appellee.

This suit was instituted in the Circuit Court of Escambia County by the Appellee, to have the tax levy and assessment of Escambia County for the year 1914 declared invalid and to cancel certain tax certificates issued upon lands claimed to be owned by the Appellee. A demurrer was filed on behalf of the Appellant to the bill of complaint. Upon hearing this demurrer was overruled, and an appeal was taken from this ruling to the Supreme Court. This suit was settled by agreement.

In the Supreme Court, State of Florida.

*Ernest Amos, Comptroller,
et al., Appellants,*

v.

*Jacksonville Mortgage and
Realty Company, Appellee.*

This suit was instituted in the Circuit Court of Clay County, Florida, by the Appellee seeking to have cancelled

certain tax certificates against real property alleged to be owned by the Appellee. A demurrer was filed to the bill of complaint, and upon hearing was overruled. An answer was filed and thereafter a statement of facts were agreed upon and the cause was heard upon the bill of complaint, answer and agreed statement of facts. The court in its final decree held the tax sales illegal and void and directed the cancelling of the certificates. From this ruling and the ruling on the demurrer to the bill an appeal was taken to the Supreme Court. The Supreme Court affirmed in part and reversed in part the decree of the Circuit Court. Reported in 81, So. 524.

*In the Circuit Court of the Fourth Judicial Circuit,
Duval County, Florida.*

Malcolm Barrs, Complainant,

v.

*Ernest Amos, Comptroller,
Defendant.*

This is a suit brought to cancel certain tax certificates issued upon certain property in Duval County upon sale of such property because of the non-payment of taxes for the years 1907, 1908 and 1909. A demurrer on behalf of the defendant has been filed but has not yet been disposed of.

In the Supreme Court, State of Florida.

*Ernest Amos, Comptroller,
Appellant,*

v.

R. M. Cary, Appellee.

This suit was instituted in the Circuit Court for Escambia County by the appellee against the State Comp-

troller, seeking to have certain tax certificates covering land alleged by the appellee to be owned by him, and to have declared null and void the assessment of taxes for the years 1913, 1914 and 1915. A demurrer was filed to the bill of complaint, which was overruled. An appeal was taken from the order of the court overruling the demurrer, to the Supreme Court, where the cause is now pending. This suit was dismissed upon agreement of parties thereto.

In the Supreme Court, State of Florida.

*The Texas Oil Company,
a Corporation, Appellant,*

v.

*Ernest Amos, as Comptroller,
Appellee.*

This suit was instituted by the appellant to restrain the collection of the license tax placed upon tank cars under the provisions of Section 46 of Chapter 6421. A demurrer was filed to the bill which was sustained. From the order of the Circuit Judge sustaining the demurrer an appeal was taken to the Supreme Court. The Supreme Court reversed the order of the Circuit Court sustaining the demurrer. Reported in 81 So. 471.

*In the Circuit Court, Second Judicial Circuit, Leon
County.*

*Sidney J. Catts, Governor, et al.,
Plaintiff,*

v.

*George Lewis, as Executor,
Defendant.*

This suit was instituted by the plaintiff against the defendant for an accounting as Executor of the estate of James D. Westcott, and is now pending in the court.

This suit was dismissed upon agreement of parties thereto.

INJUNCTIONS, MANDAMUS AND OTHER EXTRA- ORDINARY LEGAL PROCEDURE.

In the Supreme Court, State of Florida.

*Joseph Dixon Crucible Co., a New Jersey
Corporation, Appellant,*

v.

*Chas. E. Allen, Tax Collector, Citrus
County, Florida, Appellee.*

This was a case originating in the Circuit Court of Citrus County, wherein the Appellant sought to enjoin the Appellee from collecting taxes which had been assessed against it on the assessment roll for the year 1915. After various proceedings in the Circuit Court the bill was dismissed, and thereupon the case was appealed to the Supreme Court and is reported in 77 Fla. 365, 81 So. 511.

In the Circuit Court, Duval County.

*District Grand Lodge No. 27,
Grand United Order of Odd Fellows
of the State of Florida,
Complainant,*

v.

*J. C. Luning, State Treasurer,
Defendant.*

This suit was instituted by the Complainant to enjoin the State Treasurer from enforcing the provisions of Chapter 6970, Laws of Florida, in so far as it was concerned, claiming that under Section 29 as amended by Chapter 7344 it was exempt from its provisions. A temporary injunction was granted. A motion to quash was made and overruled. The case is now pending.

In the Circuit Court, Taylor County.

*Burton-Swartz Lumber Co.,
Complainant,*

v.

*A. C. Hendry, Tax Collector,
Defendant.*

The Complainant filed its bill praying for an injunction to issue against the defendant restraining him from collecting certain taxes assessed against it. A temporary restraining order was granted. This suit was settled by agreement of the parties thereto.

In the Circuit Court, Dade County.

Charles LeJune, Complainant,

v.

*D. W. Moran, Sheriff, R. E. Rose,
State Chemist, W. A. McRae, Com-
missioner of Agriculture, and C. E.
Johnson, Inspector, Defendants.*

This suit was instituted by the Complainant seeking to enjoin the defendants from attaching certain grapefruit under the provisions of the Immature Citrus Fruit Law. A temporary injunction was granted. A motion to quash this writ was made and denied. The case was appealed to the Supreme Court. Hon. John C. Gramling, State Attorney, handled this case in the Circuit Court. It is reported in 78 Fla. 613.

In the Supreme Court, State of Florida.

*John W. Rast, Tax Collector,
Appellant,*

v.

George W. Hulvey, Appellee.

This case was instituted in the Circuit Court of Duval County by the appellee seeking to have the Tax Collector enjoined from collecting taxes which had been assessed against property alleged to be owned by him. A demurrer was filed to the bill and was overruled. Thereupon an appeal was taken to the Supreme Court. This case is reported in

In the Supreme Court, State of Florida.

*Camp Phosphate Company, a
Corporation, Appellant,*

v.

*Charles E. Allen, Tax Collector
of Citrus County, Appellee.*

This was a case originating in the Circuit Court of Citrus County. The Appellant filed its bill in the Circuit Court seeking to have the Appellee enjoined from collecting taxes which had been assessed against property alleged to be owned by it for the year 1915. After various proceedings in the Circuit Court the bill was dismissed and the case was appealed to the Supreme Court, and is reported in 77 Fla. 341, 81 So. Rep. 503.

In the Supreme Court, State of Florida.

R. L. Kennerly, Appellant,

v.

*Ernest Amos, Comptroller,
Appellee.*

This Appellant instituted suit in the Circuit Court of Leon County seeking by mandamus to compel the Appellee to cause the cancellation of certain tax certificates. The Appellee filed a demurrer to the bill, which was sustained. From the order sustaining the demurrer an appeal was taken to the Supreme Court. The case is reported in 78 Fla. 552.

In the Supreme Court, State of Florida.

State ex rel., Daniel A. Finlayson,
Complainant,

v.

Ernest Amos, Comptroller,
Defendant.

This was a suit asking for writ of mandamus to cause the Comptroller to register the motor-driven vehicle of the Complainant and to assign to it a distinctive number, he having made application and paid to the Comptroller five dollars—the fee which Complainant claimed was the one provided for in Chapter 7275, Laws of 1917, for such motor vehicles as he desired to have registered. After various proceedings the Court granted the writ. This case is reported in 76 Fla. 26.

In the Supreme Court, State of Florida.

Dixie Holding Company,
Appellant,

v.

Frank Brown, Clerk Circuit
Court, Duval County,
Appellee.

The appellant filed a bill in the Circuit Court for Duval County, praying for a writ of mandamus to issue to cause the appellee to permit the redemption of certain tax certificates, alleging that under the provisions of Chapter 7272, Laws of 1917, such redemption was authorized. The appellee filed a demurrer to the bill, which was sustained. The appellant took an appeal from the order sustaining the demurrer to the Supreme Court. The ruling of the Circuit Court was affirmed, 81 So. 415, 77 Fla. 247.

In the Supreme Court, State of Florida.

State ex rel. Van C. Swearingen,
Attorney General,
Relator,

v.

W. S. Bullock, Judge of the Fifth
Judicial Circuit of Florida,
Respondent.

This was a case of original jurisdiction wherein the Relator instituted mandamus proceedings against the Respondent seeking to cause him to docket and entertain jurisdiction of a certain criminal case which had been transferred to a county in the circuit of which the Respondent was Judge. This case is reported in 79 So. 337.

In Circuit Court, Leon County.

American Railway Express Co.,
Plaintiff,

v.

Ernest Amos,
Defendant.

This suit was instituted by the Plaintiff against the Defendant for the purpose of recovering the amount of license taxes paid by the said Plaintiff for registering certain motor vehicles, which license was claimed by the Plaintiff to not to be required of such vehicles, it having paid the tax provided by law (Chapter 6421, Acts 1913), which relieved it from paying any further license tax. This suit is now pending.

In Circuit Court, DeSoto County.

Mary A. Odlin et al.

v.

J. C. Luning, State Treasurer.

This was a proceeding instituted for the purpose of having a tax sale certificate cancelled. A motion was made by the Respondent to dismiss the bill of complaint, insofar as the same affects the Respondent, and to strike his name therefrom, which motion was granted.

In the Supreme Court, State of Florida.

Van C. Swearingen, as Attorney General,

v.

Francisco Arango & Co. et al.

This proceeding was filed in the Supreme Court praying for a writ of Quo Warranto. The Court denied the petition without prejudice to right of petitioners to apply to the Circuit Court for the writ. Application was made to the Circuit Court of Hillsborough County for the issuance of the writ, but petition was denied, and the cause was appealed to the Supreme Court, where it is now pending.

In Circuit Court, Leon County.

*Central Florida Oil and
Gas Company,
Relator,*

v.

*Ernest Amos, as Comptroller, and
Van C. Swearingen, as
Attorney General,
Respondents.*

The Relator filed a petition for mandamus, seeking to cause the Respondent, who as such officers compose the Investment Board to sell securities under the "Blue Sky" law, to issue to it a permit without limitations or restrictions. The suit is still pending.

The following suits were instituted in the Circuit Court of Taylor County, Florida; all involving the validity of the action of the Board of County Commissioners in equalizing the tax assessment of said county for the year 1920., and the action of the Tax Assessor in refusing to comply with the action of the board as to making changes in assessments:

*State ex rel., Van C. Swearingen,
Attorney General,*

v.

*Thomas B. Puckett et al., as
Board of County Commissioners
of Taylor County, Florida.*

*State ex rel., Brooks
Scanlon Co.*

v.

*W. H. Bethea, Tax Assessor,
Taylor County.*

State ex rel., O'Brien-Irvin Co.

v.

*W. H. Bethea, Tax Assessor,
Taylor County.*

*State ex rel., Taylor
County Lumber Co.*

v.

*W. H. Bethea, Tax Assessor,
Taylor County.*

State ex rel., Park Lumber Co.

v.

*W. H. Bethea, Tax Assessor,
Taylor County.*

*State ex rel., Burton-Swartz
Cypress Co.*

v.

*W. H. Bethea, Tax Assessor,
Taylor County.*

State ex rel. J. L. Towles et al.

v.

*W. H. Bethea, Tax Assessor,
Taylor County.*

*State ex rel. Daisy Lee
Culpepper and Husband,*

v.

*W. H. Bethea, Tax Assessor,
Taylor County.*

*State ex rel., Thomas B. Puckett
et al., County Commissioners,
Taylor County, Florida,*

v.

*W. H. Bethea, Tax Assessor,
Taylor County.*

The Tax Assessor was represented by the Attorney General and Hon. Charles E. Davis, of Madison, in these suits, all of which were settled by agreement of parties thereto.

MANDAMUS AND OTHER EXTRAORDINARY
LEGAL PROCEDURE.

In the Circuit Court Dade County, Florida.

City of Miami, Relator,

v.

*The Miami Traction Company,
a Corporation, Respondent.*

This was a case brought in the Circuit Court of Dade County wherein the Relator sought to enforce resumption of Respondent's operations of public service.

In the Supreme Court, State of Florida.

State ex rel. C. J. Miller,

Appellant,

v.

*County Commissioners of Baker
County, Appellee.*

This was a case brought for the purpose of causing delivery of a prisoner to the Sheriff of Orange County.

CERTIORARI.

C. D. Blackwell, West Palm Beach, Fla.

May 1, 1920.

Carl Kettler, Jr., was informed against in the County Court of Palm Beach County charged with a violation of the law against engaging in business on Sunday, the specific act being that of conducting a moving picture show. A motion to quash the information was filed by Kettler, which motion was granted and the defendant was released from custody; thereupon the matter was brought to the attention of the Attorney General, and he filed a petition in the Supreme Court asking that a writ of certiorari be issued to review the decision of the lower court. The Supreme Court denied the petition June 3, 1920.

QUO WARRANTO.

Authority was given by the Attorney General to the parties whose names appear below to institute proceedings in *quo warranto*. Statement of the purpose of the suit is given in each case.

John S. Beard, Pensacola, Fla.

December 15, 1919.

Authority granted to use the name of the Attorney General for the purpose of testing the constitutionality of Chapter 7821, Acts of 1919, creating a commission known as the Florida Purchase Centennial Commission, and appointing the membership thereof.

John P. Stokes, Pensacola, Fla.

March 13, 1920.

Authority granted to use the name of the Attorney General for the purpose of instituting proceedings to compel B. P. Edmundson to desist in the use of certain waters at the Port of Pensacola in such a way as to obstruct navigation.

William Fisher, Pensacola, Fla.

May 11, 1920.

Authority granted to use the name of the Attorney General to proceed against The Southern Utilities Company and the Pensacola Ice Company under Chapter 6933, Acts of 1915.

F. B. Harrell, Jasper, Fla.

June 14, 1920.

Authority granted to use the name of the Attorney General to institute proceedings against the officers of the Town of White Springs to test their right to hold office.

L. P. Hardee, Gainesville, Fla.

June 22, 1920.

Authority granted to use the name of the Attorney General to test the validity of an election which was held in Alachua County to combine four Sub-School Tax Districts into one Sub-School Tax District.

Hampton & Hampton, Gainesville, Fla.

June 27, 1919.

Authority granted to use the name of the Attorney General to institute proceedings against the Trustees

of the Special Tax School District No. 3, Levy County, Florida, to test their right to hold the office of such Trustees.

Y. L. Watson and O. J. Clayton, Quincy, Fla.

July 1, 1920.

Authority granted to use the name of the Attorney General to institute such proceedings as necessary against the Apalachicola Northern Railroad Company, or other person or corporation, for the purpose of having declared a nuisance, and the abaiting of the same, the transportation into and holding in Gadsden County certain fish scrap.

W. P. Chavous, Perry, Fla.

July 14, 1920.

Authority granted to use the name of the Attorney General to test the corporate existence of Special Tax School District No. 11 of Lafayette County, Florida, and also to test the corporate existence of H. McN. Wade, W. M. Pinner and R. H. Futch, as Trustees.

F. W. Pope, Daytona, Fla.

July 18, 1919.

Authority granted to use the name of the Attorney General to institute proceedings on behalf of the Town of Daytona Beach against the Central of Florida Railway Company for forfeiture of its franchise.

W. B. Cone, Macclenny, Fla.

Authority granted to use the name of the Attorney General for the purpose of testing the validity of the creation of a Special Tax Road District. The case was

dismissed after the Legislature passed an act creating a Special Tax Road District to take the place of the one involved in this suit.

HABEAS CORPUS PROCEEDINGS DISPOSED OF
BY THE SUPREME COURT DURING THE
YEARS 1919 AND 1920.

In the Supreme Court, State of Florida.

H. K. Bailey v. J. C. VanPelt, Sheriff:

Bailey was informed against in the Court of Record of Escambia County, said information charging that on the 23 day of June, 1919, he knowingly and wilfully failed to keep and perform certain rules and regulations made and promulgated by the Live Stock Sanitary Board of the State of Florida, in that he failed to thoroughly and properly dip his cattle regularly every fortnight day until such time as it is ascertained by regular inspection and dipping that the cattle and premises are free of ticks. Bailey applied for a writ of Habeas Corpus which was granted and issued by the Judge of the Court of Record of Escambia County. Upon hearing it was ordered and decreed that Bailey be remanded to the custody of the Sheriff for such other proceedings as might be conformable to law. Upon writ of error judgment was affirmed, August 12, 1919. Reported in 78 Florida.

Ex Parte W. H. Foxworth,
I. M. Holmes and J. C. McCune,
v. State:

Relators were arrested in Hernando County for unlawfully transporting over a public highway in said county, a dry county, intoxicating liquors in violation of Section 3 of Chapter 7733, Laws of 1918. Forthwith a petition for a writ of habeas corpus was filed in the Supreme Court, and it was there ordered that said writ be issued returnable before Judge Bullock, of the Fifth Judicial Circuit. The writ was so issued, and upon a hearing petition was denied and Relators remanded to the custody of the Sheriff of Hernando County. From this ruling Relators took writ of error to the Supreme Court. Judgment reversed May 8, 1919. Reported in 78 Fla.

Verne Godwin, v. M. M. Whitehurst, Sheriff:

Godwin was arrested under a warrant issued out of the County Judge's Court of Pinellas County upon an affidavit charging that he did then and there operate a motor boat in the fishing industry on the waters of Tampa Bay without first having procured a license. On habeas corpus before the Circuit Judge, the petitioner was remanded to custody under the commitment, and from such order a writ of error was sued out to the Supreme Court. Judgment affirmed November 19, 1919. Reported in 78 Fla.

H. H. Hayman v. R. M. Dillon, Chief of Police:

Hayman was convicted in the Municipal Court of the City of Miami of the charge of supplying water for human consumption without holding a valid permit from the Board of Health of the City of Miami, under the pro-

visions of an ordinance of the City of Miami "for the prevention and punishment of the sale of impure water." Upon habeas corpus before the Judge of the Eleventh Judicial Circuit the petitioner was remanded to custody. From this ruling Petitioner took writ of error to the Supreme Court. Judgment reversed May 3, 1920. Reported in 79 Fla.

Antonio Marasso v. J. C. VanPelt, Sheriff:

Marasso was informed against in the Court of Record of Escambia County for the violation of Chapter 7736, Laws of Florida. On habeas corpus before the Circuit Judge petitioner was remanded to the custody of the Sheriff. From this judgment writ of error was sued out to the Supreme Court. Judgment affirmed April 19, 1919. Reported in 77 Fla.

Edward McClain v. J. W. West, Deputy Sheriff:

McClain was arrested under a warrant sued out of the Justice of the Peace Court of the Eighth Judicial District of Calhoun County, charging him with the violation of Paragraph 6 of Section 14 of Chapter 6877, Laws of Florida. Forthwith a petition for writ of habeas corpus was filed in the Supreme Court. Petitioner discharged November 27, 1920. Reported in 80 Fla.

G. F. Parsons v. H. Whitaker, Sheriff:

Parsons was arrested under a warrant issued by the Justice of the Peace of the Second Justice District of Escambia County, alleging the violation of Chapter 7345, Acts of 1917. On habeas corpus before the Circuit Judge petitioner was discharged from custody. From this ruling Respondent took writ of error to the Supreme Court. Judgment reversed July 30, 1920. Reported in 80 Fla.

Sanborn Land v. State:

Land was convicted in the County Judge's Court of Santa Rosa County of the offense of engaging in and carrying on the business of a liquor dealer in violation of Section 2 of Chapter 6179, Laws of 1911, after said county had voted against the sale of intoxicating liquors. On habeas corpus before the Circuit Judge, the petitioner was remanded to custody, and from such order a writ of error was sued out to the Supreme Court. Judgment affirmed February 22, 1919. Reported in 77 Fla.

*State of Florida, ex rel. W. H. Neisel v.
D. W. Moran, Sheriff:*

Neisel was convicted in the Criminal Court of Record of Dade County for the violation of Chapter 7736, Laws of Florida, Acts of 1918. On habeas corpus before the Circuit Judge petitioner was remanded to custody. From this judgment writ of error was sued out to the Supreme Court. Judgment affirmed June 28, 1920. Reported in 78 Fla.

M. R. Wood v. H. Whitaker, Sheriff:

Wood was arrested under a warrant issued out of the County Judge's Court of Escambia County upon an affidavit charging that he did then and there unlawfully have in his possession five quarts of intoxicating liquors. Forthwith a petition for a writ of habeas corpus was filed in the Court of Record, which petition was denied. From this ruling petitioner took writ of error to the Supreme Court. Judgment affirmed October 18, 1920. Reported in 78 Fla.

Arthur Yeager v. State:

Yeager was arrested under a warrant issued by a Justice of the Peace in Duval County upon an affidavit charging that he did unlawfully use bottles of the Purety Ice Cream and Dairy Company by filling the same with milk or cream. Petitioner was bound over to the Criminal Court of Record of Duval County, sued out a writ of habeas corpus, and at the hearing petitioner remanded to the custody of the Sheriff. From this ruling petitioner took writ of error to the Supreme Court. Petitioner discharged from custody August 12, 1919. Reported in 77 Fla.

W. A. Zachary v. Lee Morris:

Zachary was arrested upon a warrant issued out of the County Judge's Court of Volusia County charging him with operating a motor vehicle in violation of a local law applicable only to Volusia County. After being taken into custody petitioner filed his petition in the Circuit Court for a writ of habeas corpus, and upon a hearing was remanded to the custody of the law. From this ruling petitioner took writ of error to the Supreme Court. Judgment affirmed August 11, 1919.

TABULATED REPORT OF CRIMINAL CASES IN WHICH OPINIONS WERE FILED BY
THE SUPREME COURT DURING THE YEARS 1919 AND 1920.
CASES DISPOSED OF DURING JANUARY TERM 1919, AND REPORTED IN SEVENTY-
SEVENTH FLORIDA REPORT.

| Name of Offender. | Offense. | County. | Court. | Disposition |
|--------------------------|--|------------|----------|-------------|
| Alexander, F. M..... | Grand larceny | Duval | Criminal | Affirmed |
| Black, J. C..... | Embezzlement | Liberty | Circuit | Affirmed |
| Boyington, Lucy | Manslaughter | Bay | Circuit | Affirmed |
| Bynum, J. C..... | Carnal Intercourse | Columbia | Circuit | Reversed |
| Carter, Joe | Unlawful marking cattle ... | Leon | Circuit | Reversed |
| Coleman, J. J..... | Murder | Bay | Circuit | Dismissed |
| Dixon, J. L. | Burning fence | Lafayette | Circuit | Affirmed |
| Elliott, Robert P..... | Obtaining money by false pre- tense | Washington | Circuit | Affirmed |
| Griswold, D. E..... | Obtaining money by false pre- tense | St. Lucie | Circuit | Affirmed |
| Gadsden, John | Assault with intent to rape.. | Osceola | Circuit | Affirmed |
| Hobbs, Claude and Marvin | Murder 2nd degree | Santa Rosa | Circuit | Affirmed |
| Howell, Grace V..... | Murder 1st degree | Dade | Circuit | Reversed |
| McMullen, Malcolm | Grand larceny | Taylor | Circuit | Reversed |
| Moore, S. F..... | Grand larceny | Taylor | Circuit | Affirmed |
| Powers, Claude | Unnatural and lascivious acts | Duval | Circuit | Abandoned |
| Rodewold, Charlie | Manslaughter | Duval | Circuit | Dismissed |

| | | | | |
|-----------------------|---------------------------------|--------------|----------|-----------|
| Russell, Eulie | Being accessory before the fact | Washington | Circuit | Reversed |
| Sheffield, W. D. | Disbarment | Hillsborough | Circuit | Dismissed |
| White, T. D. | Embezzling public funds | Washington | Circuit | Affirmed |
| Wilds, T. B. | Perjury | Hillsborough | Criminal | Affirmed |

CASES DISPOSED OF DURING JUNE TERM, 1919, AND REPORTED IN SEVENTY-
EIGHTH FLORIDA REPORT.

| Name of Offender. | Offense. | County. | Court. | Disposition |
|-----------------------------|--|------------|----------|-------------|
| Adams, Willie | Larceny | Taylor | Circuit | Affirmed |
| Barker, Charlie | Uttering forged instrument.. | Walton | Circuit | Reversed |
| Bates, Henry | Breaking and entering..... | Polk | Circuit | Reversed |
| Correlis, Manuel | Unlawfully selling liquor ... | Orange | Criminal | Affirmed |
| Dalswell, David, alias Byrd | Rape | Jackson | Circuit | Affirmed |
| Dean, Albert | Assault with intent to commit murder 2nd degree | Dade | Circuit | Affirmed |
| Drayton, Clarence | Obtaining money under false personation | Manatee | Circuit | Affirmed |
| Faust, Isaac | Mured 2nd degree..... | Volusia | Circuit | Reversed |
| Grace, Will | Murder 3d degree..... | Leon | Circuit | Affirmed |
| Gunn, Charlie | Grand larceny | Santa Rosa | Circuit | Reversed |
| Hall, Marion | Murder 1st degree..... | Walton | Circuit | Affirmed |
| Higginbotham, Bass | Larceny | DeSoto | Circuit | Reversed |
| Howard, W. J. | Aggrevated assault..... | Okaloosa | Circuit | Affirmed |
| Howard, W. J..... | Assault with intent to murder 1st degree | Okaloosa | Circuit | Affirmed |
| Jarman, Leonard | Assault with intent to commit murder 2nd degree..... | Jackson | Circuit | Affirmed |

| | | | | |
|--|---|-----------|----------|----------|
| Kelly, M. P..... | Assault with intent to commit manslaughter | Gadsden | Circuit | Affirmed |
| King, Jessie | Extortion | Okaloosa | Circuit | Affirmed |
| Long, E. | Murder 2d degree | Jackson | Circuit | Affirmed |
| Riggins, Eddie | Murder 2d degree | Lafayette | Circuit | Affirmed |
| Russell, Henry F..... | Manslaughter | Duval | Circuit | Affirmed |
| Shield, W. R..... | Unlawful intercourse | Wakulla | Circuit | Reversed |
| Stiner, Johnnie | Larceny | Columbia | Circuit | Affirmed |
| Sykes, John | Larceny | Duval | Criminal | Reversed |
| Thompson, Junius C..... | Murder 1st degree..... | Dade | Circuit | Reversed |
| Tucker, Joe, and Parker, Glover | Assault and battery..... | Wakulla | Circuit | Reversed |
| Wilson, Isom | Murder 2d degree..... | Jackson | Circuit | Affirmed |

CASES DISPOSED OF DURING JANUARY TERM, 1920, AND REPORTED IN SEVENTY-
NINTH FLORIDA REPORT.

| Name of Offender. | Offense. | County. | Court. | Disposition |
|---|-------------------------------|--------------|-------------|-------------|
| Alvin, A. D..... | Soliciting members, etc..... | Escambia | Ct. of Rec. | Dismissed |
| Anderson, Adrin | | Duval | Circuit | Dismissed |
| Baker, Sallie | Bigamy | Jackson | Circuit | Affirmed |
| Blackwell, Will and Robt | Murder 1st degree..... | Bay | Circuit | Affirmed |
| Bradley, James | Manslaughter | Suwannee | Circuit | Reversed |
| Manning, Henry, et al.... |:..... | Clay | Circuit | Dismissed |
| Brown, Arra, alias "Dime" | Murder 2d degree | Manatee | Circuit | Affirmed |
| Brown, Dan, et al..... | Grand larceny | Hillsborough | Criminal | Dismissed |
| Collinsworth, Ruth C.... | | Walton | Circuit | Dismissed |
| Dixon, P. D..... | Assault to commit murder... | Madison | Circuit | Affirmed |
| Dixon, Thomas | Murder 1st degree..... | Santa Rosa | Circuit | Dismissed |
| English, R. | Grand larceny | Dade | Criminal | Affirmed |
| Gafford, J. A. | Breaking and entering..... | Taylor | Circuit | Reversed |
| Garrett, Will | Assault to murder | Duval | Criminal | Dismissed |
| Harrell, Hamilton, alias Harper | Uttering forged instrument... | Jackson | Circuit | Affirmed |
| Haywood, Solomon, et al... | | Clay | Circuit | Dismissed |
| Jewell, W. L..... | Soliciting members | Escambia | Ct. of Rec. | Dismissed |
| Johnson, Raymond | Manslaughter | Columbia | Circuit | Affirmed |
| Kelly, Charles | Murder 2d degree..... | Madison | Circuit | Reversed |

| | | | | |
|---|--|--------------|-------------|-----------|
| Landrum, Frank, et al..... | Murder 1st degree..... | Columbia | Circuit | Affirmed |
| Lockhart, Tine, and Rog- ers, Bertha | Adultery | Jackson | Circuit | Affirmed |
| Lowman, A. Irving, et al.. | Murder 1st degree..... | Hernando | Circuit | Affirmed |
| Maynard, H. C. | Soliciting members, etc..... | Escambia | Ct. of Rec. | Dismissed |
| Modlin, John | | Bay | Circuit | Dismissed |
| Mosley, Charlie | Grand larceny | Clay | Circuit | Affirmed |
| McElroy, Eausau | Aggravated assault | Bay | Circuit | Dismissed |
| Pittman, M. J..... | Grand larceny | Duval | Circuit | Dismissed |
| Pringle, G. W..... | Soliciting members, etc..... | Escambia | Ct. of Rec. | Dismissed |
| Rast, John W..... | Embezzlement | Duval | Circuit | Reversed |
| Rodewolt, Charlie C..... | Manslaughter | Duval | Circuit | Dismissed |
| Sasser, A. B..... | Unlawfully disposing of per- sonal property | Santa Rosa | Circuit | Affirmed |
| Sealey, Clyde, and Han- cock, Perry | Grand larceny | Columbia | Circuit | Affirmed |
| Thompson, C. C..... | Rape and sexual intercourse.. | Bay | Circuit | Dismissed |
| Westman, E. W..... | | Duval | Circuit | Dismissed |
| Witt, Tom, and Swilley, Isam | Manslaughter | Madison | Circuit | Affirmed |
| Wright, Hattie | Murder 2d degree..... | Hillsborough | Criminal | Reversed |
| Yarbrough, A. Y..... | Perjury | Hillsborough | Circuit | Reversed |

CASES DISPOSED OF DURING JUNE TERM, 1920, AND REPORTED IN EIGHTIETH
FLORIDA REPORT.

| Name of Offender. | Offense. | County. | Court. | Disposition |
|---|---|--------------|----------|-------------|
| Boykin, Will | Murder 1st degree..... | Santa Rosa | Circuit | Affirmed |
| Brooks, Arthur | Threats to accuse another ... | Duval | Criminal | Affirmed |
| Brown, Will, and Croft, C. | Breaking and entering..... | Suwannee | Circuit | Affirmed |
| Dannelly, A. W..... | Assault with intent to commit rape | Walton | Circuit | Reversed |
| Ford, John | Breaking and entering..... | Okaloosa | Circuit | Affirmed |
| Giddins, Will, and Penton, Sherman | Larceny | Santa Rosa | Circuit | Affirmed |
| Guyton, Tom | Manslaughter | Duval | Criminal | Affirmed |
| Habersham, Sam | Burglary | Dade | Criminal | Affirmed |
| Hambrick, Perry | Carnal intercourse | Bay | Circuit | Affirmed |
| Hamlin, John | Larceny | Wakulla | Circuit | Affirmed |
| Henderson, James | Breaking and entering..... | Okaloosa | Circuit | Reversed |
| Higginbotham, Bass | Larceny | DeSoto | Circuit | Affirmed |
| Lasher, Bert | Larceny | Dade | Criminal | Affirmed |
| Licata, Michael | Violation liquor law..... | Hillsborough | Criminal | Dismissed. |
| McQuagge, D. R..... | Issuing worthless checks.... | Jackson | Circuit | Affirmed |
| Neicarta, Mike | Manslaughter | Dade | Circuit | Affirmed |
| Norwood, Columbus | Manufacturing liquors | Gadsden | Circuit | Reversed |

| | | | | |
|--------------------------|---|----------|----------|------------|
| Ormand, Bessie | Assault with intent to commit murder | Dade | Criminal | Affirmed |
| Richardson, Nat | Murder 1st degree..... | Putnam | Circuit | Reversed |
| Riggins, Mallory | Murder 1st degree..... | Duval | Circuit | Affirmed |
| Robinson, Susie | Manslaughter | Jackson | Circuit | Reversed |
| Rodley, Willie Anne..... | | Duval | Circuit | Dismissed. |
| Smith, Thurman H..... | Breaking and entering..... | DeSoto | Circuit | Reversed |
| Smith, Ed | Manslaughter | Escambia | Criminal | Reversed |
| Stedman, Perry | Desertion | Alachua | Circuit | Reversed |
| Steffanos, Will | Burglary | Dade | Criminal | Reversed |

OFFICIAL OPINIONS

FOR THE YEARS 1919 AND 1920.

Opinions to the Governor

ELECTIONS—SPECIAL—MEMBERS OF LEGISLATURE.

Tallahassee, Fla., January 3, 1918.

*Honorable Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

I am in receipt of your letter of 31st ult. with reference to the question of calling Special Elections for the purpose of electing members of the Legislature—vacancies having been caused by the death of the former representatives.

Replying to your inquiry, I beg to advise that Section 177 of the General Statutes provides that "Whenever a special election for any office is required to be holden, the Governor shall make an order declaring on what day the same shall be held, and deliver the same to the Secretary of State, whereupon the Secretary of State shall publish notice of the election to be holden therefor in one or more newspaper published weekly at the State Capital, for not less than fifteen days nor more than forty days prior to said election, containing notice of the vacancy or vacancies to be filled, and of the county or counties in which the elections are to be held therefor."

It appears from the above provision of law that you may call these elections to be held at any time between

now and the date of the convening of the next session of the Legislature provided you do so in time for the advertising to be published as provided above. The Secretary of State has all the usual forms for this proceeding.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

RAILROAD COMMISSION—AUDIT OF ACCOUNTS.

Tallahassee, Fla., January 3, 1919.

*Honorable Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

Replying to your communication of the 2nd instant, in which you asked to be advised as to whether or not you have the right to cause the accounts of the Railroad Commission to be audited, I beg to advise that under the provision of Section 165, General Statutes, 1906, the accounts and books of record of the Railroad Commission are subject to being audited by the State Auditor just the same as the books and accounts of any other State officer.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

HOME GUARDS—REMOVAL OF OFFICER.

Tallahassee, Fla., January 6, 1919.

*Honorable Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

I am in receipt of your communication of the 6th instant enclosing letter from Capt. J. S. Shoesmith, Company A, Volusia County Guards, with reference to the questions as to how an officer of the Guards may be removed or discharged.

Replying to your communication, I beg to advise that Section 3, of Chapter 7292, Laws of 1917, provides that a commissioned officer may be discharged, upon the recommendation of the commanding officer, by the Governor. In counties where there is a full organization or battalion of County Guards, this would mean the commanding officer who would be the Major of the Battalion.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

LICENSE—NOT REQUIRED OF CERTAIN SALESMEN.

Tallahassee, Fla., January 7, 1919.

*Honorable Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

I am in receipt of your letter of the 3rd instant enclosing communication from Mr. S. Clay Williams, Assistant Counsel for R. J. Reynolds Tobacco Company,

with reference to the manner in which their salesmen are selling and introducing their goods through jobbers, and note that you desire for me to advise you as to the law involved.

Replying to your communication, I beg to advise that Mr. Williams states that their salesmen operate upon the following plan:

"A salesman of this Company calls *upon a jobber* and secures from him some of our products upon which a better distribution is desired in that territory. The salesman gives the jobber a receipt for the goods, copy of which receipt is attached hereto for your information. The salesman takes the goods and proceeds to call on *dealers only*. By the terms of the receipt the salesman is required to account to the jobber for the goods he received or for the amount for which they were sold to the dealers. The jobber gets his profit on the transaction of the salesman, but the R. J. Reynolds Tobacco Company realizes nothing out of the transaction. The plan is merely a method adopted for the purpose of making prompt delivery of the goods to *retail merchants* and of keeping them supplied therewith. In effect the work of such a salesman is work performed for the local *jobber* and *retailer* in the community in which the salesman happens to be working. The terms of the enclosed receipt show, as the fact is, that in doing this work the salesman is acting as agent for the local jobber."

It is my opinion that upon the above statement of facts the salesmen of the R. J. Reynolds Tobacco Company do not come within that provision of the law which provides for peddlers paying a license. In other words, I do not think the manner of doing business as set out above constitutes peddling within the contemplation of our License Law, as it appears that the salesman makes no

profits on the transaction or sale, but is paid, as I understand, a salary by the R. J. Reynolds Tobacco Company.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

LEGISLATURE—JUDGE OF QUALIFICATIONS OF MEMBERS.

Tallahassee, January 8, 1919.

*Honorable Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

I am in receipt of your letter of the 6th instant enclosing a letter from Hon. J. L. Dillard, of Winter Garden, Fla., with reference to the Senator from that District being in such a physical condition as to in all probability prevent him from being able to attend the regular session of the Legislature, which convenes in April, 1919, and note that you desire my opinion as to what steps may be taken as to enable that District to be represented.

Replying to your communication, I beg to advise that I know of no law that would require Senator Crawford to resign on account of his physical disability, nor is there any law providing for the removal of members of the Legislature. Section 6 of Article III of the Constitution provides that each House shall judge the qualifications of its own members; and each House, with the concurrence of two-thirds of all its members present, may expel a member.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

COUNTY OFFICERS—AUDITOR'S REPORT ON.

Tallahassee, Fla., January 9, 1919.

*Honorable Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

I am in receipt of your letter of the 27th ult., enclosing report of the State Auditor to you upon his examination of the offices of Duval County, and I note that you desire to know if you should take any steps in regard to this report in so far as the same may show purchases in amounts more than Three Hundred Dollars without advertising for bids.

Replying to your communication, I beg to advise that Section 769-E, of the Compiled Laws of 1914, provides as follows:

"No contract shall be let by the Board of County Commissioners for the working of any road or street, the construction or building of any bridge, the erecting or building of any house, nor shall any goods, supplies or materials for county purposes or use be purchased when the amount to be paid therefor by the county shall exceed three hundred dollars, unless notice thereof shall be advertised once a week for at least two weeks in some newspaper of general circulation in the county, calling for bids upon the work to be done or for the goods, supplies or materials to be purchased by the county, and in each case the bid of the lowest responsible bidder shall be accepted, unless the County Commissioners shall reject all bids because the same are too high."

It is my interpretation of this Law that in all cases where purchases are to be made in excess of the amount named in the above provision of law that the County

Commissioners should advertise for bids in accordance with law, and where it is known that the amount of supplies, goods or materials will amount to more than Three Hundred Dollars for immediate or subsequent use bids should be asked for by the Board of County Commissioners for furnishing such supplies.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

PLANT BOARD—ATTORNEY GENERAL AND STATE
ATTORNEYS REPRESENT.

Tallahassee, Fla., January 15, 1919.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

Replying to your letter of the 13th instant, I beg to advise that I think it was the intention of the Legislature under the provision of Section 15, of Chapter 6885, Laws of Florida, Acts of 1915, to place the duty of representing the Plant Board upon the Attorney General and State Attorneys.

It is my opinion that the words "District Attorneys," as used in the above Act, was intended to mean "State Attorneys." It was held in the case of *State v. Salge*, 2 Nev. 321, 324, that Prosecuting Attorney and District Attorney is one and the same thing.

Yours very truly,

VAN. C. SWEARINGEN,
Attorney General.

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS—RULES AND REGULATIONS REGARDING STATE CONVICTS.

Tallahassee, Fla., January 15, 1919.

*Miss R. A. Catts, Sec'y,
Board of Com'rs State Institutions,
Capitol.*

Dear Miss Catts:—

I am in receipt of your communication of this date in which you state that the Board of Commissioners of State Institutions desires my opinion as to how far the Board's authority goes with reference to making rules and regulations regarding the care and maintenance of convicts in this State.

Replying to the above inquiry, I beg to advise that Section 5, of Chapter 7324, Laws of Florida, Acts of 1917, provides as follows:

"That all prisoners leased under the provisions of this Act, whether to Boards of County Commissioners or to private lessees, shall be guarded, fed, clothed, given proper medical attention, and otherwise maintained, at the expense of the lessees, who shall also pay all expenses of transporting such prisoners from the State Prison to their respective camps and return at the expiration of the lease. All State convicts shall be at all times under the supervision of the Commissioner of Agriculture and the Board of Commissioners of State Institutions, who shall prescribe such rules and regulations as may be deemed necessary for their safe keeping, maintenance and discipline; and the said Board shall execute such contracts with the lessees and require such bonds for the performance of same as shall be necessary to carry out the purposes of this Act."

It is my opinion that this provision of law clothes the Board of Commissioners of State Institutions with full power and authority to make such rules and regulations pertaining to the care, safe keeping and maintenance of State prisoners as it may deem necessary.

Yours very truly,

VAN. C. SWEARINGEN,
Attorney General.

MARKS AND BRANDS—DUTY OF INSPECTORS OF

Tallahassee, Fla., January 18, 1919.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

I am in receipt of your letter of the 16th instant, enclosing letter from H. R. Maige, Cattle Inspector, of Carrabelle, with reference to his duties and powers, and note that you desire me to give you the law upon this subject.

Replying to your inquiry, I will advise that Section 3113 prescribes the duties of Inspectors of Cattle and is as follows:

“It shall be the duty of each and every inspector appointed by the Governor to inspect the marks and brands of all cattle driven from or through or shipped from their respective counties or districts, when notified or cognizant of such facts, and shall keep a suitable book for that purpose, to be furnished by the County Commissioners, for the purpose of inspecting and recording all marks and brands of all cattle taken by them, and description of unmarked

cattle driven from, through, or shipped from their respective counties or districts, and shall set forth in the record the name or names of the person or persons driving or shipping such cattle, and the dates thereof. Each and every Inspector shall be required to furnish each and every person so driving or shipping cattle from or through their respective counties or districts a certificate, which shall set forth the number of cattle so inspected, the mark or marks, and brands, and also a description of all unmarked cattle. Each and every Inspector shall file a full report of his work each month with the Board of County Commissioners, to be recorded by the Clerk of the Circuit Court in a book kept for that purpose, and the Clerk shall receive the same fees allowed in other cases provided by law for such work."

Section 3338 provides for a penalty in cases where the provisions of the law relating to the inspection of cattle are not complied with and is as follows:

"Any person who shall violate any of the provisions of law relating to the inspection of cattle driven or shipped from any county or district in this State, where the County Commisisoners have established cattle districts, and cattle inspectors have been appointed, shall be punished by fine not more than five hundred dollars, or more than six months."

When the Inspector knows of a failure to comply with the provisions of law relative to the inspection of cattle, I take it that it is his duty to cause a prosecution to be instituted against the violators thereof.

Yours very truly,

VAN. C. SWEARINGEN,

Attorney General.

COUNTY CONVICTS, HOUSING OF AND WORKING.

Tallahassee, Fla., February 22, 1919.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

With reference to the record relative to the action of the Board of County Commissioners of Pinellas County in hiring or leasing one Jesse T. Brumfield, who was sentenced to six months imprisonment in the County Jail, will state that the said record presents apparently the following facts:

1st. That Pinellas County is working its county convicts upon the public roads of said county, and that special exception or discrimination has been made in the case of Brumfield in hiring him out to a company he had formerly worked for.

2nd. That he is not required to conform to the rules and regulations laid down for other convicts as formulated by the Commissioner of Agriculture, especially Regulation No. 1, which requires "Contractors shall require each and every convict to wear at all times the uniform of the Florida State Prison, which shall be the same that is now used," and said regulation requires that the above rule shall apply to county convicts.

The statute governing the subject is Chapter 7323, Laws of 1917, which, among other things, provides that "Said county convicts shall be kept and worked under such rules and regulations and supervision as may be prescribed by the Commissioner of Agriculture, with the advice and approval of the Board of Commissioners of State Institutions, and the Commissioner of Agriculture, with the approval of the Board of Commissioners of State Institutions, shall have the power to enforce all such rules

and regulations. Upon the failure of any lessee or other person in charge of said county convicts to comply with such rules and regulations, the Commissioner of Agriculture, with the approval of the Board of Commissioners of State Institutions, shall have the right to require said county convicts returned at the expense of the party or parties working the same to the County Jails of the county in which they were convicted."

Pursuant to the above, the Commissioner of Agriculture would have authority to direct the return of the said Brumfield to the County Jail of Pinellas County upon refusal to comply with the rules and regulations quoted.

Neither the statute nor the rules and regulations above referred to specifically cover the question of the authority of the County Commisisoners to make an exception in the case of any able-bodied convict by leasing him to private parties in lieu of placing him upon the county road, and this is probably a fit subject for future legislation.

Respectfully submitted,
VAN. C. SWEARINGEN,
Attorney General.

NATIONAL GUARD—ADJUTANT GENERAL—HOW
OFFICERS APPOINTED.

Tallahassee, Fla., January 31, 1919.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

Replying to your letter of the 24th instant, enclosing letter from Adjutant General Christian, asking for authority to appoint Lieutenant Brock in the Quarter-

master's Corps, National Guard, so that he may assume the duties of Major Snow; also asking you to authorize him to permit Lieutenant Brock to occupy the house adjoining his, and setting forth the advantages thereof, I note you desire my opinion as to your authority to authorize General Christian to make this appointment, and would advise that Division "d" of Sec. 672 of the Compiled Laws of 1914 provides among other things the following:

"The Adjutant General shall be appointed by the Governor, and the remaining officers of the Staff Corps and departments shall be appointed by the Governor upon the recommendation of the Adjutant General in his capacity of Chief of Staff. No person shall be appointed as Chief Officer of any Staff Corps, or department, who has not held commission in the army or navy of the United States, the Confederate States, or in the organized militia of this State for at least two years."

It appears from the above provision of law that the Governor would have to make the appointment mentioned in General Christian's letter, upon the recommendation of the Adjutant General.

The authorizing of the occupancy of the house by Lieutenant Brock, as suggested in General Christian's letter, is a matter left entirely to your discretion.

Yours very truly,

VAN. C. SWEARINGEN,

Attorney General.

COUNTY GUARDS—DISBANDONMENT OF.

Tallahassee, Fla., February 11, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 8th inst., enclosing letter from Hon. B. Vance, of Arcadia, with reference to the disbanding of Company B, County Guards of DeSoto County, and note that you desire my opinion with reference thereto.

Replying to your inquiry, will state that on January 27th, 1919, I wrote Major Thomas Gaskins, Jr., Arcadia, with reference to the disbanding of companies of County Guards as follows:

“Replying to your inquiry, I beg to advise that it occurs to me that as the County Commissioners are empowered to organize companies of County Guards, and as it depends on this board as to whether any funds be provided for the maintenance thereof, that such board would have the authority to disband such organization. However, the disbanding of County Guards is not authorized except in accordance with the terms of this Act, which, in my opinion, should be strictly complied with, and which reads as follows:

“Sec. 5. The organization of any of the companies herein provided for may be disbanded within four (4) months after peace is declared between the United States and the Imperial Government of Germany, or such other foreign enemy as at that time the United States may have been at war with.” (Chap. 7292).

It will be noticed that these Companies may be disbanded *within* four months after peace is declared.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

INTOXICATING LIQUORS SOLD FROM FOREIGN
VESSELS.

Tallahassee, Fla., February 28, 1919.

*Honorable Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

Your communication of the 25th inst., duly received as follows:

“Attached please find letter from Hon. A. H. McInnis, Sheriff of Monroe County, asking for information as to his authority in cases where the Cuban boats have sailors who come ashore and sell whiskey to citizens of Key West.

“Will you kindly render me an opinion in regard to this matter so that I may advise him.”

The letter of Mr. McInnis attached to your communication states that certain boats owned by the Cuban Government while lying in the harbor have sailors aboard who bring intoxicating liquors ashore and sell it on the streets of Key West, and that he is informed that launches run out from the shore to these boats, where they buy liquors from sailors aboard said ships.

My understanding is that international law will not permit a Sheriff to go aboard a foreign ship to make a

search. However, it would seem that the Sheriff would have the same recourse in detecting the possession of liquor and the sale thereof when done by persons get-person undertaking to bring liquor into the County, or selling same in the County. In other words, it is the duty the same in the County. In other words, it is the duty of the Sheriff to see that no liquors are illegally brought into the County or possessed in the County or sold in the County, and he should be able to detect the above-mentioned parties doing either of these acts as well as he could others.

In this connection, it is contemplated that the Federal Government when enacting a law to put into effect the Federal Prohibition Amendment will undoubtedly cover the situation outlined by Mr. McInnis, and until that is done our Sheriffs in Counties having seaports will have to make the best of the situation.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

DEEDS CEDING JURISDICTION TO UNITED STATES.

Tallahassee, Fla., March 18, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

Replying to your letter of the 26th ult., I beg to advise that I have examined the papers submitted with reference to certain property in Apalachicola, Florida, the title to which has been acquired by the United States Govern-

ment for public building purposes. It appears from these papers that under the provisions of Section 7 of the General Statutes of Florida you would be authorized to execute a deed to the Government of the United States ceding jurisdiction to the said lands to the United States Government as set out in the deed hereto attached. This deed appears to be in proper form for execution by you.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

HOLIDAYS—GOOD FRIDAY NOT A LEGAL
HOLIDAY.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

Replying to the last paragraph of your letter of the 19th instant, with reference to the question of whether or not Good Friday is a legal holiday in this State, I beg to advise that there is no statute in this State making such day a legal holiday.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

ROAD AND BRIDGE BONDS—HOW SINKING FUND
MAY BE INVESTED.

Tallahassee, Fla., March 20, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 19th instant enclosing letter from Mr. Howard L. Cawthon, of DeFuniak Springs, Florida, to you, to which is attached a copy of resolution adopted by the Board of County Commissioners of Walton County with reference to certain funds of Special Road and Bridge District No. 1.

The law covering the investment of the funds mentioned is found in Chapter 6473, Laws of Florida, Acts of 1913, which is an amendment to Section 800 of the General Statutes, and reads as follows:

“All money collected to pay the interest, or for a sinking fund of said bonded debt, shall be paid over by the Tax Collector or other person receiving the same on account of taxes collected or property sold therefor to the said trustees, and the said trustees are required to pay out of the moneys so received the interest of said County bonds, and to invest the residue in the bonds aforesaid, or if the said bonds cannot be had at par or at such premium as to said trustees may seem reasonable and just, then such residues may be invested in the United States, State, County or Municipal bonds bearing interest; or in the event such bonds cannot be acquired to advantage, such funds shall be deposited in the savings department of National banks or State banks of the State of Florida, or savings banks organized and existing under

the laws of this State, at the prevailing rate of interest, to be held as an accumulating fund for the ultimate redemption of said County bonds."

It appears to me that if this provision of the law is brought to the attention of the Trustees of the said Special Road and Bridge District that these Trustees would in all probability perform their duties under the provision thereof.

Yours very truly,
VAN. C. SWEARINGEN,
Attorney General.

CIRCUIT JUDGES—TRANSFER OF.

Tallahassee, Fla., March 28, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

Your letter of the 26th instant duly received asking for my opinion as to your duty in regard to the transfer of a Circuit Judge to Polk County to try the case of the State ex rel. Walter L. Clifton v. John A. Moore. The order suggesting the disqualifications of Judge John S. Edwards attached to your communication reads as follows:

"The relator having called the above styled cause to the attention of the Court, that said cause was at issue and ready for trial, and requesting this Court to set said cause for trial, and this Court appearing from the record to be disqualified from trying said cause, or to act further therein, and this Court considering that said cause should be disposed of at an

early date, does hereby request His Excellency, the Governor of the State of Florida, to assign a Judge from some other Judicial Circuit of said State, to come to said County at an early date to try said cause. (Signed) John S. Edwards, Judge."

Replying to your communication will state that Section 8 of Article 5 of our Constitution provides that "the Governor may in his discretion order a temporary exchange of Circuits by the respective Judges, or order any Judge to hold one or more terms or part or parts of any term in any other Circuit than that to which he is assigned." Said Section further provides that the Legislature shall enact statutes carrying into effect said Section 8 of Article 5, and Section 1814 of the General Statutes provides that "Whenever it shall appear to the Governor of this State that any Judge of a Circuit Court is disqualified in any cause pending in said Court * * * the Governor may require * * * and assign any other of the Judges of the Circuit to hold regular or special terms of the Court in such Circuit at such time or times as the Governor may direct."

In addition to the above Chapter 6900, Laws of Florida, 1915, provides the nature and extent of jurisdiction of any Circuit Judge after he is transferred to another Circuit to try any particular case or cases.

There is no suggestion for a change of venue in the order forwarded you by Judge Edwards and quoted above. In my opinion, you have the authority to transfer or assign a Circuit Judge of any other Circuit in the State to Polk County for the trial and disposition of the case mentioned.

I am returning herewith Order mentioned.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

PROBATION OFFICER—APPOINTMENT OF
ASSISTANT.

Tallahassee, Fla., April 10, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of April 5th enclosing letter from Mr. J. C. Lanier, Probation Officer and Clerk, Jacksonville, Florida, requesting you to appoint an Associate Probation Officer, under Chapter 6494, Laws of Florida.

Replying to your communication, I beg to advise that you would, under the provisions of this law, be authorized to appoint an Associate Probation Officer as requested by Mr. Lanier.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

APPOINTMENTS—HOW MADE.

Tallahassee, Fla., April 21, 1919.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 21st instant, as follows:

“Your opinion is requested in relation to the duties of the Governor as to ad interim appointments

in filling vacancies after the Senate has agreed to the removal of a suspended officer. Should the appointee of the Governor receive a new commission after the Senate has acted, or can the appointee continue to exercise the duties of the office under the old commission given him at the time of the suspension of the original officer?"

Replying to the above communication, I beg to advise that Section 15, of Article 4, of the Constitution, provides as follows:

"All officers that shall have been appointed or elected, and that are not liable to impeachment, may be suspended from office by the Governor for malfeasance, or misfeasance, or neglect of duty in office, for the commission of any felony, or for drunkenness or incompetency, and the cause of suspension shall be communicated to the officer suspended and to the Senate at its next session. And the Governor, by and with the consent of the Senate, may remove any officer, not liable to impeachment, for any cause above named. Every suspension shall continue until the adjournment of the next session of the Senate, unless the officer suspended shall, upon the recommendation of the Governor, be removed; but the Governor may reinstate the officer so suspended upon satisfactory evidence that the charge or charges against him are untrue. If the Senate shall refuse to remove, or fail to take action before its adjournment, the officer suspended shall resume the duties of the office. The Governor shall have power to fill by appointment any office, the incumbent of which has been suspended. No officer suspended who shall under this section resume the duties of his office, shall suffer any loss of salary or other compensation in consequence of such suspension. The suspension

or removal herein authorized shall not relieve the officer from indictment for any misdemeanor in office."

In an advisory opinion to the Governor reported in 78 So. Rep., page 673, text 674, the Supreme Court said in considering this provision of our Constitution that:

"In contemplation of this section of the organic law, a suspension from office does not destroy, but merely suspends, the right acquired by an election to office. The suspended officer may be reinstated by the Governor, or, if the term for which he was elected has not expired, he automatically may 'resume the duties of the office' if his suspension is not concurred in by the Senate. Where an incumbent is suspended from office, the appointment contemplated by law to fill the office is merely to exercise all the authority of the office, the duration of the authority under the appointment depending on whether the person suspended is reinstated, or is removed, or resumes the duties of the office because of action or nonaction of the Senate."

In view of the above expression of the Supreme Court, it is my opinion that when a person is appointed to an office, the incumbent of which has been suspended, such appointment only covers the period during the suspension, and if the person so suspended is removed there is a vacancy in the office which should be filled by appointment, and a commission should be issued to such appointee.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

COUNTY BOARD OF PUBLIC INSTRUCTION PUR-
CHASE SITE FOR SCHOOL BUILDING.

Tallahassee, Fla., April 28, 1919.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

Replying to your request for my opinion upon the subject matter of a letter addressed to you, under date of April 26, 1919, from Clyde F. Burns, Secretary of Citizens Committee, New Port Richey, Florida, to which is attached a statement of a committee appointed at a mass meeting of the citizens of your town setting forth certain actions and doings of the County Board of Public Instruction of Pasco County, with reference to the purchase of a site for the erection of a school house, I beg to advise that from the statements contained in this petition, it appears that the County Board of Public Instruction consolidated the school at old Port Richey and New Port Richey and thereupon sought a central location for the two schools as consolidated; that this Board purchased a four-acre tract of land on which there was a grapefruit grove, and paid therefor the sum of Five Thousand Dollars.

Under the provisions of Paragraph 4 of Section 347, it is provided that the Board of Public Instruction may select and provide a site for each school house of not less than one-half acre of ground in the rural districts and as nearly that amount as is practicable in the villages and cities. It would appear from this provision of law that the Board acted within its authority in making the purchase.

The question of most vital interest appears to be the consideration paid for this tract of land, and this, in my opinion, is one that is left to the judgment of the Board,

provided the purchase was made in a lawful manner. Whether or not the Board acted wisely in paying this amount for a school site for a small community is a question which is left to their judgment, and upon which there appears to be no check under the law, unless the Ninth Paragraph of Section 351 vests in the County Superintendent of Public Instruction the authority to check any extravagant use of school funds for the purpose of purchasing a site for school buildings. This Section provides that the County Superintendent of Public Instruction shall see that the interests of the County are properly guarded and its right secured in the making and performance of every contract for the construction of school buildings, or for other purposes.

It would appear from the statement of the Citizens Committee that the purchase of such a costly site was unnecessary, and to say the least of it, an extravagant use of the school funds of the County.

The statements that the mortgage was made and executed prior to the conveyance of the property by deed, and that the minutes of the Board providing for the purchase of the property show that the deed and mortgage were made prior to the Board taking action as to the purchase of this property, seem to be rather irregular. The Board should have adopted and had recorded its minutes showing its action with reference to the purchase of this property prior to the execution of the deed, and the deed should have been made at least simultaneously with the mortgage, and not the mortgage prior thereto.

From the statements made by the Citizens Committee, it occurs to me that it would be well to furnish the Board of Education and the County Superintendent with a copy of said petition with the request that they answer the same fully.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

NATIONAL GUARD APPOINTMENT OF OFFICERS.

Tallahassee, Fla., May 8, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 6th instant, enclosing copy of letter from General Christian to you in regard to the appointment of Major J. L. Crary.

Replying to your communication, I beg to advise that from the facts stated in the letter from General Christian to you it would appear that the appointment of Major Crary would be proper under the provisions of Paragraph D of Section 2 of Chapter 7292, Laws of Florida, Acts of 1917, which provides as follows:

“The several staff corps and departments shall each consist of such number of officers and enlisted men as may be necessary to perform the duties relating to the several staff corps and departments at General Headquarters, on the staff of brigades and divisions, and at camps, posts, depots and other similar military establishments; and their grades and designations shall be the same as prescribed for similar staff corps and departments of the Regular Army. The Adjutant General shall be appointed by the Governor, and the remaining officers of the staff corps and departments shall be appointed by the Governor upon recommendation of the Adjutant General in his capacity as Chief of Staff. Staff officers including officers of the pay, inspection, subsistence and medical departments hereafter appointed shall have had previous military experience, and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason

of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and vacancies among said officers shall be filled by appointment from the officers of the militia of this State. No person shall be appointed as chief officer of any staff corps or department who has not held commission in the Army or Navy of the United States, the Confederate States, or in the organized militia of this State for at least two years."

As I understand the above quoted provision of the law, in connection with the letter of General Christian to you, you would be authorized to make the appointment as requested by the Adjutant General.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COUNTY GUARDS—ACCOUNTS AGAINST.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 16th instant, enclosing letter from Hon. Obe P. Goode, Clerk Board County Commissioners St. Johns County, with copy of letter to Mr. Goode from Major Crary with reference to account of L. Victor against St. Johns County Guards for cleaning uniforms, and note that you desire my opinion as to whether or not the State is in any way liable for the payment of this account.

Replying to your communication, I beg to advise that the position taken by Major Crary in his letter to Mr.

Goode is correct. The State of Florida is no way responsible for such an account and is not liable for the payment of same.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

SHERIFF—CANNOT BE PROBATION OFFICER.

Tallahassee, Fla., June 18, 1919.

Honorable Sidney J. Catts
Tallahassee, Fla.

Dear Sir:—

I am in receipt of your letter of the 17th instant, enclosing letter from Hon. R. P. Fletcher, Clerk Circuit Court Okeechobee County, Florida, and note what Mr. Fletcher has to say, and also your request for my opinion as to whether or not the Sheriff of Okeechobee County can lawfully be appointed Probation Officer of said County.

Replying to your inquiry, I beg to advise that I think the Probation Officer is such an one as would preclude, under the Constitution, the Sheriff from holding it.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

STATE HEALTH OFFICER—HOW SELECTED.

Tallahassee, Fla., June 18, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your communication of the 16th inst., in which you ask for my opinion as to whether the State Health Officer is an appointee of the State Board of Health, and if so whether such officer is subject to removal by the said board for dereliction of duty, malfeasance, misfeasance and nonfeasance in office.

Replying to your communication, I beg to advise that Section 1112 of the General Statutes of Florida provides as follows:

"Board to Elect President and Health Officer. It shall be the duty of the said board, at their first meeting, to elect one of their number as president of said board. At the same meeting it shall be the duty of said board to designate and employ a physician, who shall be an expert in diagnosis of yellow fever, small-pox, cholera and other infectious diseases, and who must be a person of recognized ability and skilled in hygiene and sanitary science, and a graduate physician of a recognized and reputable medical college, which said person shall be known as the State Health Officer. The State Health Officer shall be the executive officer of the board and secretary of the same, and shall hold the office for the term hereinafter specified, unless removed by the board for just cause."

This provision of law governs the question submitted by you, and it will be noted that it provides for the employment of the State Health Officer, fixes the term for

which he shall serve under such employment and also provides under what conditions he may be removed by the board.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

TAXES—COMMISSIONS OF TAX COLLECTOR.

Tallahassee, Fla., June 27, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 23rd instant, enclosing letter from Hon. Alton C. Hendry, Tax Collector, Perry, Florida, to you, under date of the 20th instant, with reference to the letter written by me in regard to the tax matter about which he wrote you pertaining to taxes of Geo. B. Perkins, of this city, and note what Mr. Hendry has to say.

Replying to your communication, I beg to advise that in my communication to you under date of June 16, I stated that I did not understand that the Tax Collector was entitled to the 5% (meaning 5% of the amount of delinquent taxes before actual sale), and further stated in said letter that it was the usual custom, as I understood, that when the taxes had not been paid, and a list of the lands had been furnished to the newspaper, and the newspaper had set up the type for the advertisement, then the newspaper should be paid just as if the lands had been actually advertised. You will note that I stated I understood it was the custom to pay the newspaper under such conditions.

With reference to the right of the Tax Collector to the 5% commission, I beg to state that Section 559 provides that "When lands are advertised for taxes under the provisions of this Act, the Tax Collector shall be entitled to 15c for certificate of sale, and shall be entitled to 5% commission on the amount of each delinquent tax *when actual sale is made.*"

The above provision of law sustains the position taken by me in my letter to you with reference to the Tax Collector not being entitled to the 5% commission.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

JUVENILE COURT—HILLSBOROUGH COUNTY.

Tallahassee, Fla., July 2, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of June 20th, enclosing letter from Rev. W. A. Cooper, of Tampa, with reference to the question of whether there is a Juvenile Court existing in Hillsborough County, and also if the County Judge is competent to sit as the Judge of such court and note that you desire my opinion upon these two questions.

Replying to your communication, I beg to advise that the recent session of the Legislature enacted a law establishing a Juvenile Court in Hillsborough County and providing for the appointment of a Judge of such court, whose term of office should be four years. This law has

in it a provision repealing all laws in conflict with it. While it is a general rule of construction that laws should be construed together when not inconsistent with each other, yet, I think that under the provisions of the law creating the Juvenile Court of Hillsborough County, it is such as to exclude the County Judge from acting as Judge of said Court.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CLERK CRIMINAL COURT OF RECORD—COSTS OF
IN CASE OF STATE V. RAST.

Tallahassee, Fla., July 19, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 30th ult., enclosing correspondence relative to the matter of costs claimed by the Clerk of the Criminal Court of Record of Duval County in the case of the State v. Rast, certain items of which the County Commissioners of that County claim are illegally taxed.

While I could hardly be expected to intrude upon a matter with which I have no official connection, and in which there appears to be a conflict of opinion between the claimant and the attorney for the Board, I beg to express the view that the validity of the Clerk's claim would probably depend upon the facts surrounding the introduction of the evidence of which these exhibits were a part. I think that if the exhibits were separately introduced and

file marked by the Clerk that he would be entitled to his fee for each of them, but if they were fastened together and the whole mass introduced as one item of evidence it would be otherwise. This seems to be in line with the authorities that I have examined, though I have not undertaken a thorough investigation.

I return herewith the papers accompanying your letter.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

PEONAGE—CONDITION OF, AT PHOSPHATE
MINES.

Tallahassee, Fla., August 4, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of your communication of this date to which is attached the affidavits of several parties with reference to conditions in the Phosphate Mines of Polk County.

In reply I beg to say that if the conditions are as are represented in the affidavits, these laborers are held in a virtual state of peonage, for which the parties responsible are amenable to the Federal laws governing that offense and of which the State of Florida has no jurisdiction.

The parties themselves illegally detained of their liberty, or some one for them, may have relief in the courts of this State through the writ of Habeas Corpus.

I do not think that under the circumstances stated the Sheriff would have any authority to take any action, unless he were clothed with due process from some competent court.

Very respectfully,
 VAN C. SWEARINGEN,
 Attorney General.

INDUSTRIAL SCHOOL FOR BOYS—TERM OF COMMITMENT.

Tallahassee, Fla., July 30, 1920.

*Miss R. A. Catts, Secretary
 Board of State Institutions,
 Tallahassee, Fla.*

Dear Miss Catts:—

I am in receipt of your letter of the 29th instant enclosing communication from the Superintendent of the Florida Industrial School for Boys with reference to the term of commitment to said school and whether or not the Superintendent thereof has any authority to retain anyone who has been committed thereto a sufficient length of time for such person to make his full merit points even though the term of such person has expired.

Replying to your communication I beg to advise that Section 5 of Chapter 7377, Laws of Florida, Acts of 1917, provides as follows:

“When any boy shall be committed by the Judge of any Court in the State of Florida to the Florida Industrial School for Boys said commitment shall be for such period as the committing Judge shall deem proper, or until he shall reach his ma-

jority, or unless discharged earlier by the Board of Managers as reformed."

From this provision of law it appears that the term of commitment may be fixed for a definite length of time by the Committing Judge, and it may be either for a term less than the number of years required to attain his majority or until he reaches his majority, and such commitment can only be changed by the Board of Managers. I fail to find any provision in the law for the detaining of any person at such institution beyond the time when he reaches his majority.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CORPORATIONS—AMENDMENT OF CHARTER
—PROTEST.

Tallahassee, Fla., August 12, 1919.

*Hon. S. J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of yours of the 7th and 8th instant, to each of which is attached a letter from Mr. LeRoy B. Giles, protesting against your approval of the amendment to the charter of Rockledge-Cocoa Packing Company, and in reply thereto beg to state that it is for your determination whether or not the proposed amendment would be beneficial and lawful and not injurious to the community, and whether or not it is in accord with the purposes of the original charter. Not having the charter before me, I am unable to say whether

or not this proposed amendment is in accord with the original charter, but the matter of the protest is one for you to act upon as you deem best.

I beg to say further, however, that if you should see fit to approve this amendment the protestant has his remedy in the courts to prevent the mismanagement of the corporation, and the dissipation or jeopardizing of the funds thereof.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney-General.

STATE CHEMIST—APPOINTMENT OF ASSISTANT.

Tallahassee, Fla., August 12, 1919.

*Hon. Sidney J. Catts, Governor,
 Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 4th instant, enclosing letters from Hon. R. E. Rose, State Chemist, and asking for my opinion as to the authority to appoint or employ an Assistant State Chemist to be paid out of the unexpended appropriation of 1917 for "samples and incidentals Pure Food Department," and "chemicals, apparatus, and incidentals, State Laboratory."

In view of the fact that Section 1143YY Compiled Statutes of Florida provides for "an additional Assistant State Chemist," and that the Legislature has since made specific appropriations for three such assistants, I am of the opinion that the appointment of a fourth Assistant to be paid out of the unexpended balance of an appropriation for previous years for other purposes, as above quoted, is not authorized, and that to use such

unexpended balance for the purpose of paying the salary of a fourth additional State Chemist would be a diversion of such funds not contemplated by the Legislative act.

Yours very respectfully,
VAN C. SWEARINGEN,
Attorney General.

NAVAL STORES INSPECTORS—TERRITORIAL
JURISDICTION.

Tallahassee, Fla., August 19, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 19th instant and note that you desire to know whether or not the Naval Stores Inspectors at Large have the right to go into any of the districts of the other Naval Stores Inspectors and supervise their work.

Replying to your communication I beg to advise that the second paragraph of Section 7 of Chapter 6878, Laws of Florida, Acts of 1915, provides that "The Supervising Inspector of Naval Stores of the State of Florida shall have general supervision and direction of all Inspectors of Naval Stores, including the Inspector of Naval Stores at Large, and it shall be his duty to see that they fairly and honestly perform all the duties imposed upon them and in the manner provided by law" * * * Under this provision of the law the Supervising Inspector of Naval Stores has supervision over all Inspectors of Naval Stores.

The third paragraph of the section above mentioned provides that the Inspectors of Naval Stores at Large shall have the power to make inspections at any point in the State.

It is my opinion from the above provisions of law that the Inspectors of Naval Stores at Large would have the right to make inspections of naval stores at any point in the State, when directed to do so by the Supervising Inspector of Naval Stores.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE GEOLOGIST—AUTHORITY TO RENT
OFFICES.

Tallahassee, Fla., August 28, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 27th instant, with reference to the question of whether or not the State Geologist has the authority to use any part of the appropriation for the Geological Department to pay rent for offices and rooms to carry on such work.

Replying to your communication, I beg to advise that under that provision of Section 1280M, Compiled Laws 1914, wherein it is provided that the expenses incurred in the "arrangement and proper exhibition of the geological and other collections made under the provisions of this Act" may be paid out of the appropriation made for the purpose of carrying out the provisions of the Act, it is

my opinion that the State Geologist would be authorized, if necessary, to rent such rooms as may be necessary for the purposes mentioned above. Of course, you understand that vouchers for such expenditures are required to be approved by the Governor.

Yours very truly,

• VAN C. SWEARINGEN,
Attorney General.

COUNTY GUARDS—EXPENSES OF HOW PAID.

Tallahassee, Fla., August 20, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 19th instant, enclosing letter from Hon. Obe B. Goode, Clerk Board of County Commissioners of St. Johns County, and a bill for ammunition furnished the County Guards of that County upon the occasion of their being called out for duty in Columbia County, and I note that you desire my opinion as to whether or not the bill mentioned is a proper charge against the State.

In my opinion this is a proper charge against the State, and that it will be paid in the regular course, provided the same takes its regular course through the Adjutant General's office, and is approved by him. The Adjutant General, however, should as a condition precedent to his approval satisfy himself that the property is in the State and that if the same has not been consumed on behalf of the State, it remains subject to requisition.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

RURAL SCHOOL INSPECTORS—APPOINTMENT OF.

Tallahassee, Fla., August 20, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 19th instant, which is as follows:

"I have submitted to Prof. Sheats on two different occasions a letter asking him to submit other names whom I would take a special interest in appointing as Rural School Inspectors. I have also sent one or two friends to him to see if we could not reach some agreement by compromising on a man who would be favorable to the Board.

"Mr. Sheats does not seem willing to accord me any right in suggesting who the appointee should be, but insists on presenting names of people whom I do not desire to appoint.

"I am, therefore, writing you to render me an opinion as to whether or not, under the Constitution and laws of this State, I am bound to appoint those people whom he selects, or whether or not I have the right to make an independent appointment myself."

An answer to your letter involves a construction of Section 3986, Compiled Statutes of Florida, Chapter 6539, Acts of 1913, the applicable language of which is as follows:

"Two Rural School Inspectors are hereby created by this Act, who shall be appointed by the Governor upon the nomination of the State Superintendent of Public Instruction, and shall hold their positions subject to the State Board of Education."

There are, therefore, three separate and distinct authorities, the exercise of whose several functions is contemplated by the statute, namely, in their logical order, (1) nomination by the State Superintendent of Public Instruction, (2) appointment by the Governor, and (3) the tenure subject to the State Board of Education.

Within the last few days I have had occasion to render my official opinion to the Secretary of State as to the term of Rural School Inspectors to be set out in their commissions. In that opinion I expressed the view that since there are three separate and distinct authorities who have their proper functions to perform in this connection, the commissions should be made to read for a term previously fixed by the State Board of Education, which latter authority should be governed by the constitutional provision that the term of no office created by the Legislature should be longer than four years.

We are without any exact precedent to guide us in this matter, and my conclusions have been reached by a course of reasoning by analogy. In the case of those officers who are appointed by the Governor by and with the consent of the Senate, the concurrent action of the two authorities must be had before such an office may be permanently filled. In case of a vacancy occurring when the Senate is not in session, appointment may be made, but the tenure of the appointee expires at the next ensuing session of the Senate, unless an appointment is sooner made and concurred in by the Senate.

If a vacancy occurs during a session of the Senate it is doubtful if the Governor can fill such vacancy by even a temporary appointment without the concurrence of the Senate, joint action of the two authorities when so situated as to exercise their respective functions being necessary.

The analogy is not close, it is true, the principle departure being that the nominating authority, in the case under consideration, is at all times in position to function,

and the same being true, of course, of the appointing power; but the agreement between the two may be necessary to a permanent appointment.

But it was never contemplated by the statute, I think, that the duties of the office of Rural School Inspectors should go undischarged and neglected on account of a failure on the part of the authorities whose duty it is to act to agree upon an appointment. It is also the duty of the Governor to "take care that the laws be faithfully executed." Section 6, Article 4, of the Constitution.

In view of the facts stated in your letter asking for this opinion, and of the constitutional and statutory provisions applicable here, I am of the opinion:

1. That you are not bound to select as Rural School Inspectors those whom the State Superintendent of Public Instruction selects, and

2. That you have not only the right, but that it is your duty in the event of a failure upon the part of yourself and the nominating power to agree, within a reasonable time, to fill the office by appointment, the appointee to hold at the will of the State Board of Education.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

EPILEPTICS AND FEEBLE-MINDED—NO APPROPRIATION TO PAY EXPENSES FOR INVESTIGATION.

Tallahassee, Fla., September 12, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 8th instant, enclosing communication from Hon. W. G. Brorein, of Tam-

pa, Florida, in regard to an expense incurred by the Commission appointed to make an investigation with reference to the feeble-minded and epileptics of this State, and also note that Mr. Brorein states that the expense incurred in this work amounts to about \$200.00 or \$250.00, and desires to know whether or not there is any funds available for the payment thereof.

Replying, I beg to advise that no appropriation was made for the payment of such expenses, and I know of no fund out of which it can be legally paid.

I would suggest that this matter be brought to the attention of the next session of the Legislature.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COUNTY COMMISSIONERS—TO FUNDS TO PAY
EXTRA COMPENSATION.

Tallahassee, Fla., September 13, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 10th instant with reference to the question of former and present members of the Board of County Commissioners of Bay County being paid more than \$200.00 per annum on a per diem basis for services either in the performance of their general duties or special work done in inspecting roads, and note that you desire to know whether or not there is any law authorizing the payment from any fund of the County these excess amounts, or whether or not they will have to be repaid to the County.

Replying to your communication, I beg to advise that I have given careful consideration to this matter and find that there seems to be no provision in the law by which these excess amounts could be paid from other funds of the County, therefore, under the law, the only thing to be done by these gentlemen will be to refund all the excess over and above the amount authorized to be paid to them.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

CLERK CIRCUIT COURT—FEE IN ADVANCE.

Tallahassee, Fla., October 3, 1919.

*Honorable Sidney J. Catts, Governor,
 Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 9th ult., to which are attached charges and certain exhibits connected therewith against the Clerk of the Circuit Court of Marion County, and note that you desire my opinion as to whether the matter is of sufficient magnitude to warrant investigation.

In reply thereto, I beg to say that it is my opinion that the officer in question was within his legal rights when he demanded prepayment of his fees for filing the paper in question. I might say, however, that so far as my observation extends the practice of requiring prepayment by defendants, especially in matters of this sort, is not at all universal, and is the exception rather than the rule.

I return all papers herewith.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

COUNTY OFFICERS—CHARGES COVERING ACTS
DURING FORMER TERM, NO BASIS FOR EX-
ECUTIVE ACTION IN PRESENT TERM.

Tallahassee, Fla., October 3, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 13th ult., to which is attached report of the State Auditor of his examination of affairs in Bay County, and note that you desire my opinion as to what is best to do in regard to the same.

Replying I beg to advise that from a reading of this report I find the same has reference to a complaint of one W. B. Gainer, but I do not find the complaint set out, neither do I find anything definite in regard to the same in the report unless it be with reference to the amounts which the report shows have been overpaid certain County Commissioners.

In regard to this latter matter, I beg to say that in my opinion there is no basis for executive action for the reason that no wrong doing of an official committed during a term of office which has expired can be made the basis of executive action against such officer during a new term. In other words, the terms of County Commissioners are for two years. Therefore, the term now held by the Commissioners now in office began in January, 1919, and no acts of theirs committed during a former term could be held a basis for executive action against them in the way of suspension or removal in the present term unless, of course, they should be convicted of a felony which is a general disqualification. If during a former term they received more money than they were entitled to under the law, the same might be re-

covered in an action for its restitution, provided the statute of limitations has not run.

If it should be found when the year 1919 is ended that these Commissioners have drawn a sum for the whole year in excess of the amount allowed under the law, then there might be basis for action, but according to the report none of them has, as yet, exceeded the maximum amount allowed per year, and it is not safe to assume that they will do so—the year having something like five months to run from the date of the Auditor's examination.

I return all papers herewith.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

ADJUTANT GENERAL—SALARY OF.

Tallahassee, Fla., October 11, 1919.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of yours of the 8th instant, to which is attached copy of a letter from Hon. Sidney J. Catts, Jr., Adjutant General, in reference to his salary, in which he asks this question: "Is it not a fact that even if the Legislature did not appropriate but \$2,000.00 for this purpose that the statutes provide for this office at the rate of \$3,000.00, and in event of the appropriation not being sufficient to carry out the statutory provision that the general National Guard fund will have to take care of the shortage?" and note that you desire my opinion as to the same.

The Legislature of 1915 fixed the salary of the Adjutant General at \$3,000.00 per annum and appropriated the amount necessary to pay the same. The Legislature of 1917 also made an appropriation sufficient to pay said salary. But the Legislature of 1919 appropriated amounts sufficient to pay only \$2,000.00 per year without undertaking by a specific act or in the appropriation bill to reduce the salary to that amount.

In view of the fact that the salary is fixed at \$3,000.00 per annum by specific act and that the Legislature of 1919 in appropriating a less amount did not by apt words or fair implication undertake to reduce the salary, it is my opinion that the salary is still \$3,000.00 per annum, for which the holder of the office has a just claim.

However, since Section 4 of Article IX of the Constitution provides that "No money shall be drawn from the treasury except in pursuance of an appropriation made by law," and since the appropriation for the "National Guard of Florida" is itemized, one of which items is for "Salary of Adjutant General" and the other items are for separate and distinct purposes, I am of the opinion that to supplement the appropriation for this salary by a draft upon either of the other items would not be authorized by law.

As above stated, the Adjutant General has a just claim to a salary of \$3,000.00 per year, but the difficulty is that there is no method by which the claim can be enforced and no tribunal with authority to entertain an action for the same, the State being immune from a suit against it in the absence of a general law permitting same. See Section 22, Article III of the Constitution.

From the foregoing it follows that the only remedy I am able to suggest is an act of the legislature at some future time making up the deficit caused by the insufficient appropriation of 1919.

I am informed by the Comptroller that the former Adjutant General drew only his proportionate amount of \$2,000.00 per year for the period of the current fiscal year that he held the office.

Very respectfully,

VAN C. SWEARINGEN,
Attorney General.

FISH—SELLING MULLET DURING CLOSED
SEASON.

Tallahassee, Fla., November 15, 1919.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I have your letter of the 14th instant, to which is attached a communication from Rice Brothers Packing Company, of Apalachicola, Florida, to you under date of November 12, with reference to the question of whether or not this company will be allowed to sell pickled or cured mullet during the closed season, if transportation companies can lawfully accept such fish for shipment during the closed season. Allow me to say in reply that Sections 8 and 9 of Chapter 6877, Laws of Florida, Acts of 1915, provides as follows:

“Sec. 8. That from and after the passage of this Act it shall be unlawful for any person, persons, firm or corporation to catch or to capture, or have in their possession, or ship any of the fish known as mullet, or any fresh or freshly salted mullet roe, in this State, between the 20th day of November of any year and the 20th day of January of the next

preceding year; Provided, that in the waters west of the Suwannee River the closed season in mullet shall be from November 30 to January 20th following. The possession of any fresh or freshly salted mullet, or any fresh or freshly salted mullet roe, by any person, persons, firm or corporation during the closed season shall be prima facie evidence of the violation of this law."

"Sec. 9. It shall be unlawful for any common carrier, agent or employee of such common carrier, to receive for carriage, or permit the carriage of any fresh or unsalted, or freshly salted mullet caught during the closed season mentioned in the foregoing section; Provided, however, that any person having any mullet on hand at the beginning of the closed season shall have the right to ship or dispose of same; Provided, however, that the time of such disposal and shipment shall not extend beyond ten days after the beginning of such closed season."

It appears from the above provisions of law that persons having on hand fish caught during the closed season have ten days thereafter in which to dispose of them.

Yours very truly,

VAN. C. SWEARINGEN,
Attorney General.

EPILEPTIC AND FEEBLE-MINDED COLONY— MANAGEMENT OF.

Tallahassee, Fla., December 20, 1919.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 18th instant, asking for an interpretation by me of Chapte

7887, Laws of 1919, which is the Act creating and providing for the organization and management of a State Farm Colony for the Epileptic and Feeble-Minded, as the same affects the duties of the Governor in regard to the Board of Managers, and the work of the said Board for the plans of the building and establishment upon the grounds so located; also as to whether or not the State Superintendent of Public Instruction must be consulted by the Governor about the selection of the three members who go to make up the Board in addition to the Governor and the State Superintendent of Public Instruction.

In reply I beg to advise that Section 2 of the Act provides that this institution shall be under the control and management of the State Board of Charities and Corrections, if the same shall be created. No such Board having been created by the 1919 Legislature, the control and management of the institution is thrown under five members to be composed of the Governor and the State Superintendent of Public Instruction, and three members to be appointed by the Governor, one for one year, one for two years and one for three years.

This Board of Managers is authorized to employ a superintendent and to fix his salary; also to employ, on the recommendation of such superintendent, such other teachers, physicians, laborers and helpers as may be necessary, among other things, to proceed with the erection and detailed operation of the institution.

Under the provision of Section 2, it becomes the duty of the Governor to make the appointment of three members who shall be public-spirited citizens interested in measures of social betterment, one of whom shall be a physician, and at least one of whom shall be a woman. These appointments are to be made by the Governor independent of any other authority, except that the same are subject to confirmation by the Senate as in the case of ad interim appointment of Circuit Judges, State At-

torneys or other officers, in the appointment of which the advice and consent of the Senate is necessary.

When the Board is completed, it will become its duty to employ a superintendent who shall be a man especially trained and qualified in the management of institutions of the kind mentioned, to fix his salary, and, upon his recommendation, to employ such other teachers, etc., as may be necessary to the proper conduct of the Colony, and to proceed with the erection and detailed operation of the same.

As in the case of other Boards with similar powers and duties, and by special provision of the statute, this Board of Managers is authorized to adopt all rules and regulations not inconsistent with the Act necessary to the government and control of said Colony. This means, as I understand it, that all official actions of the Board must be concurred in by a majority of its members.

I trust that the foregoing is in sufficient detail of the matter, and that if not you will not hesitate to command me further.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

CRIMINAL COURT OF RECORD—SETTING ASIDE VERDICT REVIEW.

Tallahassee, Fla., December 22, 1919.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

In regard to the matter submitted to me for my opinion in connection with the trial of a certain cause pending in

the Criminal Court of Record in and for Hillsborough County, and in which complaint is made of the action of the Judge of said Court, I beg to suggest that the only course left open to secure an adjudication in the Criminal Courts is for the County Solicitor to file a new information and take the necessary steps to procure an exchange of judges or an appointment of some other Judge to try the case. This can be done under the general provisions of the statute, as the nolle prosequi does not prevent the filing of a new information at any time within the statute of limitation.

There is no provision of law by which the ruling of the Trial Judge setting aside the first verdict can be vacated and the verdict reinstated at this time.

I return files herewith.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COUNTY COMMISSIONERS—CHARGES AGAINST
CERTAIN.

Tallahassee, Fla., January 8, 1920.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

With reference to the charges against certain of the County Commissioners of Levy County in which a hearing was had before you on the 13th of December, and which I, as a representative of the Attorney General, he being absent, attended at your direction—the matter having been turned over to me for an opinion thereon as to its legal aspects, I beg to say:

1. That under the provisions of the Act of 1919, the County Commissioners were without authority to enter into the contract mentioned in the charges and the evidence, for the reason that at the time it was executed the Trustees of the sub-district were given that authority to the exclusion of the County Commissioners; that the contract was not binding upon the district involved or the county because of the provisions of the law mentioned, with notice of which all parties to the contract were chargeable.

2. That under the same Act the Trustees of the Special Road Districts in Levy County have full and complete control of road matters in their respective districts, the County Commissioners being in this respect nothing more than the official paymaster, whose duty it is to draw warrants for the payment of bills in proper form and properly approved by the Trustees.

3. That the County Commissioners, nor any member, has the authority to withhold from the Trustees in any road district the funds available for road work in such district. In other words, the County Commissioners should not hinder or hamper the Trustees in the road matters of the districts either by undertaking supervision thereof, or in refusing to permit the lawful expenditure of funds belonging to the district.

On the other hand, in the matter of locating, contracting for, and constructing roads outside of special districts, the County Commissioners are supreme, and even the courts will refuse to interfere with their actions in such matters in the absence of a showing of a direct violation of some law.

The remedy for the people to pursue for unwise and ill-advised action by their County Commissioners in this regard is at the polls, to which resort may be had every two years.

4. That the removal of sub-district trustees should have been had only after due notice and for cause.

Whether or not the charges have been sustained by the evidence, and if so whether executive action should be taken thereon, are not matters within the purview of the duties of this office, and as to which I do not presume to advise.

The matters of unlawful diversion of funds, and the alteration of approval of certain bills, are likewise matters of fact, the truth of the charges as to which is to be determined by your excellency.

The foregoing views are views of the undersigned to whom the matter has been submitted for the reason that the Attorney General himself was unable to attend the hearing, and is not, therefore, in a position to express his individual views in the matter.

I return all files herewith.

Very respectfully,

Assistant Attorney General.

BOND TRUSTEES—ROAD BONDS—SELECTION OF.

Tallahassee, Fla., January 14, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I have your letter of the 12th inst., enclosing communication from Mr. C. A. Tompkins of Lake City to you in regard to the selecting of bond trustees by the Board of County Commissioners to handle the proceeds of the bond issue for roads in Columbia County, and note that you desire to know if the commissioners are violating the law in selecting the bond trustees.

Replying to your communication, I beg to advise that Section 799 of the General Statutes of Florida provides as follows:

799. (603). Trustees.—When the County Commissioners shall have issued bonds as aforesaid, they shall appoint by resolution of their board, to be recorded in the minutes, a financial committee of three persons, who shall be resident free holders of the county, to be styled trustees of county bonds, who shall each give bond running to the county treasurer, with sufficient sureties, in such sum as may be required by the County Commissioners, conditioned that the said trustees shall faithfully discharge the trust confided to him, and shall pay over and duly account for all such sums of money as may come into his hands by virtue of such trust, which said bonds shall be approved as to the form and the sufficiency of sureties by the Board of County Commissioners; and the County Commissioners may, from time to time, as circumstances may require, demand additional security from any such trustee. (Id. 13)

From the letter of Mr. Tompkins I do not find anything that would show any illegal action of the Board in selecting the trustees. The question of the wisdom of the selection is one to be determined by the commissioners.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE FUNDS—MANNER OF PLACING DEPOSITS.

Tallahassee, Fla., January 28, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of your communication of the 24th inst., quoting Section 132 of the General Statutes as amended by Chapter 7929, Acts of 1919, relating to the deposit of the State's moneys, and asking for my opinion as to whether the Governor, Comptroller and Treasurer, under said law, "Must subject funds to the highest and best bidder from the largest banks of the State or not, or whether they have the right under this law to let out said funds themselves to all classes of banks in different amounts, as has been done by the Treasurer heretofore. In other words: Are we forced as a Board to have the banks make bids and, on account of the largest banks being able to offer more than the small one, to let them take this money in large sums, or can we, at our discretion, let this money out legally to all the banks of the State, including State Banks and Trust Companies, as we see fit and proper, without having bids at all?"

In reply I beg to advise that in my opinion it is the duty of the three officials named to invite proposals from all banks in the State authorized to receive deposits as to the terms upon which they will receive and handle deposits of State moneys under the provisions of the Statute; that the method of obtaining such proposals may be by advertising for bids or any other method by which each prospective depository may have an opportunity to submit its proposal: That upon full opportunity being thus given it would be the duty of the

three officials named to designate as depositories the banks which offer the best inducements as to interest and security.

If there be a number of banks making equal inducements the moneys should be equally distributed between them and that the smaller bank or banks should be designated as a depository or depositories in proportion to the State tax paid by the counties in which such bank or banks are located, provided, such bank or banks offer inducements equal to the best inducements offered.

It is my understanding of the law that the object aimed at is the securing to the State of the maximum return upon its unused moneys and this was the purpose of the original Act, the amendment of 1919 being for the purpose of giving the several banks of the State the benefit of a proportionate share of the deposits, but only upon condition that they meet competition.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

PILOTS—APPOINTMENT OF.

Tallahassee, February 3, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 2nd, enclosing letter from Mr. A. B. Spaulding of Jacksonville, with reference to being appointed a Branch Pilot, and note that you desire to know if there is such an office.

Replying to your communication, I beg to advise that there is no such office as Branch Pilot provided for in the law. It may be that Mr. Spaulding desires to be appointed a Bar Pilot at the port of Jacksonville. If this be the case, it is provided in Section 1293 of the General Statutes that the Board of Pilot Commissioners shall examine persons who wish to be licensed as pilots in all matters pertaining to the management of vessels, also in regard to their knowledge of channel and harbor where they wish to act as pilots; and if after such examination it is found that the person examined is qualified to take command of all classes of vessels liable to enter the port, and is thoroughly familiar with the channel and currents of the harbor, they shall appoint and license such number as are required to perform the duties required of pilots at that port. The law provides that there shall be eleven pilots for the port of Jacksonville.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

PRISONERS—SEPARATION OF WHITE AND COLORED.

Tallahassee, Fla., February 5, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 3rd instant, enclosing letter from H. W. Rayford, supervisor of State convicts, to you making report of conditions existing at the county jail in Taylor County.

You desire my opinion as to whether the facts as stated in Mr. Rayford's report are sufficient to "constitute non-feasance or non-discharge of duty in the Sheriff's office."

Mr. Rayford states that "I found the white boy 'who killed the negro county prisoner some time ago at Corbur' was being allowed to sleep in the cell with negro female criminal, woman sleeping on cot and boy on bed on the floor." I also gather from Mr. Rayford's report that the two white women who were required to stay in jail two nights and a day, were also confined in the same cell with the boy above mentioned.

The law upon the subject of male and female prisoners being confined in the same cell is found in Section 4114c and 4114e of the Compiled Laws of 1914, which is as follows:

"4114c. Separation of white and colored and male and female prisoners.—That from and after the passage of this Act, as soon as the jails are arranged so that this Section may be complied with, it shall be unlawful for white and negro prisoners to be confined in the county jails of this State in the same cell, room or apartment, or to be so confined as to be permitted to co-mingle together; and it shall likewise be unlawful for male and female prisoners in said jails to be confined in the same cell, room or apartment, or be so confined as to be permitted to co-mingle together, and it shall be the duty of the Sheriffs of this State to confine and separate all prisoners in their custody or charge in accordance with this Act. (Id. Sec. 2).

"4114e. Removal or failure to comply with this act.—Any Board of County Commissioners and any Sheriff wilfully refusing to carry out and comply with the provisions of Sections 1 and 2 (Sec. 4114b, 4114c) of this Act in their respective spheres of duty shall be removed from office by the Governor. (Id. Sec. 4)."

A copy of Mr. Rayford's report might be sent to the Sheriff with request that he answer it fully, and after you have received his reply you can then determine whether he has wilfully violated the law.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

COUNTY COMMISSIONERS—CONTRACTS OF CERTAIN NOT AUTHORIZED.

Tallahassee, Fla., February 16, 1920.

*Honorable Sidney J. Catts, Governor,
Oxford, Fla.*

Dear Sir:—

I beg to acknowledge receipt of yours of the 13th inst., enclosing certain papers in connection with the case of certain of the County Commissioners of Levy County, and note that you desire me to go over same and advise you.

My former report in this matter made it plain, I think, that the County Commissioners of Levy County, under the Act of 1919, were without power to enter into a contract for the construction of roads in special districts, since the same were, by said Act, placed under the exclusive control and supervision of the district trustees who also had control of the funds belonging to their respective districts. Such being the case, the construction mentioned would be illegal, and, although fully advised in the premises, the commissioners continued to recognize the contract as valid and proceeded to deal with the road or roads covered by such contract and with the funds of the district or districts involved as though the Act of 1919 were not the law.

As stated in my former report, I would not presume to advise your Excellency as to what, if any, executive action should be taken in the matter, because my connection with it is purely upon the legal proposition involved.

I return the papers herewith.

Very respectfully,

Assistant Attorney General.

DEEDS—CEDING JURISDICTION TO UNITED STATES.

Tallahassee, Fla., March 17, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 13th inst., enclosing communication from Col. W. J. Barden, Lieut. Col. of Engineers, U. S. A., Jacksonville, Fla., to you requesting that you cede jurisdiction to certain lands to the United States, and enclosing copy of deed to the United States for such property, and note that you desire to know whether you should sign this deed or not.

Replying to your communication, I beg to advise that Section 7 of the General Statutes of Florida authorizes you to cede jurisdiction of the State property acquired by the United States Government for certain purposes, therefore, you would be authorized to execute a deed in compliance with the request of Col. Barden.

The form which Col. Barden forwarded you is not quite in conformity to deeds that have heretofore been issued, but the form attached hereto is a proper one for you to execute.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

GOVERNOR'S—CONTINGENT FUND.

Tallahassee, Fla., April 19, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

Replying to yours of the 16th instant, in regard to demand of Mr. T. J. Knowles, of White Springs, for reimbursement of moneys expended by him in the Catts-Knott controversy of 1916, I beg to advise that I do not think the item can properly be paid out of your contingent fund.

I return the letter of Mr. Knowles herewith.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

NURSES—STATE REGISTRATION OF.

Tallahassee, Fla., April 21, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 20th inst., enclosing a letter from Mrs. Mary A. Townsend, R. N. State College for Women, to which is attached a card headed "Special Notice" and signed by Mrs. L. B. Benham, Secretary, Florida State Board of Examiners. I note that Mrs. Townsend desires to know whether under the law it is proper to comply with this special notice, the second provision of which is "Send these certificates to the Secretary of the Florida State Board of Examiners to be registered and placed on file."

Chapter 7831 is the law of this State providing for the State registration of nurses. Under the last paragraph of Section 6 of this Act, among other things it is provided that "Any person to whom a certificate shall be issued shall within 60 days thereafter cause the same to be recorded with the clerk of the court of the county in which such person resides, *and such person shall, whenever requested, exhibit such certificate or a certified copy thereof.*" It appears that this provision of the law is applicable to nurses who are not graduates, but those who desire to practice as practical nurses.

I fail to find any provision in the law requiring either those who practice practical nursing or those who are registered as registered train nurses to file with the Board their certificates. It seems to me that it was not the purpose of the Legislature to authorize the Board to cause persons who had received certificates of registration either as trained nurses or practical nurses to file

their certificates of authority with the Board but that a record of the issuance of the registration should be kept by the Board. In view of the language as quoted above taken from the last paragraph of Section 6 of Chapter 6831, it appears that it was the intention of the Legislature for the nurses to be in a position to present their certificates of registration whenever called upon to do so. If they should be required to file these certificates with the Board then it would make it impossible for them to comply with this provision of the law.

I assume that the requiring of the certificates to be placed on file with the Secretary of the Board is a regulation or rule promulgated by the Board, but I am inclined to the view that such a regulation is not authorized under the law.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

SCHOOL—ATTENDANCES OFFICER—JUSTICES
 OF PEACE MAY REQUIRE PREPAYMENT OF
 COSTS.

Tallahassee, Fla., April 23, 1920.

*Hon. Sidney J. Catts, Governor,
 Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 22nd instant, enclosing a letter from L. L. Callaway, Attendance Officer, Levy County, to you with reference to certain cases which he has presented to the County Judge requesting warrants to be issued and that the Judge refused to do

so until a bond or some arrangements be made for the payment of the costs in the cases.

Replying to your communication, I beg to advise that Section 4072 of the General Statutes of Florida, provides that in all cases of Justices of the Peace and County Judges in this State shall require payment in advance or security, for costs of process of the same and of examination, unless the party applying for a warrant shall make an affidavit of insolvency and of substantial injury, to person or property, by him suffered, in which case process shall issue without payment of costs. It seems that no provision was made in the compulsory school attendance law for the payment of costs in cases that might arise thereunder, and unless the County Judge sees fit or proper to waive this requirement until such is done, he may, under the law, refuse to issue the warrant in accordance with Section 4072 above mentioned.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE HOSPITAL—COMMITMENT TO.

Tallahassee, Fla., June 14, 1920.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 14th inst., with reference to the question of having a child three years and seven months old committed to the hospital at Chattahoochee.

Replying to your communication, I beg to advise that in order for a person to be committed legally to the State Hospital at Chattahoochee it is necessary for a petition signed by five persons, not more than one of whom is related to the person, to be presented to the County Judge requesting that a commission be appointed to examine into the sanity of the person in question. Upon such petition being filed with the Judge he appoints a committee consisting of one physician and two laymen to examine such person and make report to him. If from such examination the committee reports the person in question to be insane, then the County Judge issues his order of commitment of such person to the hospital.

This is the only way in which the little child about whom you write may be legally sent to the hospital.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE BOARD OF HEALTH—EXPENDITURES OF.

Tallahassee, Fla., July 20, 1920.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 15th ult., transmitting report of Hon. M. C. McIntosh, Assistant State Auditor, upon the expenditures of the State Board of Health and note that you desire my opinion as to the legality of the several items, particularly Item Thirteen, which is the sum allowed the State Health Officer for maintenance of quarters.

In view of the fact that the Legislature fixes the salary of the State Health Officer and that the explanation of this expenditure frankly concedes that the reason therefor is that the fixed salary is inadequate compensation for the person at present holding the position, it becomes necessary and proper, in my opinion, only to suggest that the legislative action is presumed to have been intended to fix the maximum amount of the salary of the State Health Officer. In this light it seems clear that this additional allowance is purely supplementary to the allowance by the Legislature and is unauthorized.

I do not think that the case here is parallel with those of other State institutions mentioned by the Assistant State Auditor, assuming that the allowance to the heads of the institutions named are proper, which I do not now undertake to determine.

As to the other items of expenditure covered by this report, I am of the opinion that they are matters of policy for the determination of the State Board of Health and there is no expressed or implied inhibition against them.

I return the report herewith.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

**GOVERNOR—NO AUTHORITY TO ISSUE ORDER TO
SHERIFF TO EXECUTE ORDER OF REMOVAL.**

Tallahassee, Fla., July 21, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of even date, stating that you made the statement before Wilson & Boswell, Attorneys,

of Tampa, that an Executive Order by the Governor must be enforced by the Sheriff of any given County, and note that you desire my opinion upon the matter.

In reply, I beg to advise that in my opinion there is no constitutional or statutory authority under which the Governor of Florida may issue an Executive Order to the Sheriff of any County to execute an order of removal.

The proper course would be, in my opinion, for the notice of removal or suspension to be communicated to the officer to be removed or suspended—this communication to be either in person or by mail, and not necessarily by any officer, and an issuance of commission to the new officer in due course. Under those circumstances, the newly appointed officer has his remedy in the courts by mandamus to require a surrender of the office to him.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

RESIGNATIONS—STATE SENATOR.

Tallahassee, Fla., August 9, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 6th inst., enclosing communication from Hon. W. E. Baker, of Brooklyn, Fla., to you in which he asked you to accept his resignation as State Senator of the 29th Senatorial District. I note that you desire my opinion as to whether or not it is your duty to accept this resignation, or if it should be accepted by the Secretary of the Senate.

Replying to your communication, I beg to advise that it is my opinion that the Governor is the proper officer to accept the resignation of a State Senator.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE CONVICTS—SUPERVISION OF.

Tallahassee, Fla., August 14, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I have your letter of the 12th inst., enclosing letter from you to Mr. B. E. Raysor, of Lowell, Fla., one of the State Convict Inspectors, and a letter from Mr. Raysor to you making a report upon State Road Camp No. 8, located at Jennings, Fla. I note that you desire my opinion as to whether or not the State Convict Inspectors have any jurisdiction or supervision over the convicts being worked by the State Road Department.

Replying to your communication, I beg to advise that Chapter 7833, Laws of Florida, Acts of 1919, is the law providing for the State convicts being worked by the State Road Department. Section 2 of this law provides that "all State convicts shall be maintained and worked under the rules and regulations to be provided by the Board of Commissioners of State Institutions, and shall be at all times under the supervision of the Commissioner of Agriculture and the Governor."

It is my opinion that all State convicts being worked by the State Road Department are subject to be worked

under the rules and regulations provided by the Board of Commissioners of State Institutions, and are under the supervision of the Commissioner of Agriculture and the Governor.

A State Convict Inspector has, in my opinion, the same right and authority to carry out instructions from the Commissioner of Agriculture and the Governor, with reference to convicts that are being worked by the State Road Department, just the same as if they were being worked by private lessees.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

COUNTY BOARD OF PUBLIC INSTRUCTIONS—RE-
INSTATEMENT OF CERTAIN.

Tallahassee, Fla., September 3, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I have examined and read with care the charges presented to you against the members of the Board of Public Instruction of Polk County, upon which you acted in suspending said officers, and the answer of the members of said Board thereto upon their application for reinstatement.

From my examination of all the papers and matters connected with the suspension of the members of the said Board of Public Instruction, and their answer in the premises, upon the question of reinstatement, I beg to advise that it seems to me that the payment of the sal-

ary of the Superintendent of Public Instruction for the period of time subsequent to the suspension of Hon. John A. Moore, by the Governor from this office, should have been held in abeyance until the question of who was legally the County Superintendent of Public Instruction was determined. However, in view of the position taken by the Board of Public Instructions as the reason for paying the salary of the said office to Hon. John A. Moore, as the same is set out in the affidavit of the members of the Board of Public Instructions, has some basis in reason and equity as well as in law, I do not think that such action alone would be sufficient grounds to sustain a suspension of the said officers.

It is further my opinion that the charges with reference to the expenditures by said board of Special Tax School District funds, is fully answered by the members of the board and justify their action in the premises.

Therefore, it seems to me that a reinstatement of the members of the Board of Public Instruction of Polk County, and also the County Superintendent of Public Instructions of said county would be proper action to be taken by you and I therefore recommend the same.

I am herewith enclosing all papers submitted to me.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

OFFICER—ABANDONING OFFICE.

Tallahassee, Fla., September 10, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of this date, enclosing telegram from the members of the Board of Public In-

struction, Hernando County, Brooksville, Fla., to you stating that Superintendent Ray left there Tuesday after having stated publicly that he was going to Georgia to accept a position as teacher in that State, etc.

Replying to your communication, if Mr. Ray has quit his office and gone to another State to take employment, such action on his part vacates the office. I suggest that you wire the Board asking for the address of Mr. Ray, and upon receiving same, you then communicate with Mr. Ray by wire requesting him to return to his duties as Superintendent of Hernando County at once. If it is not his intention to do so, then you would be justifiable in making an appointment to fill the vacancy.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

OFFICES—HOLDING TWO AT SAME TIME.

Tallahassee, Fla., September 15, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 14th inst., enclosing letter from Mr. Geo. R. Spooner, with reference to the question of whether or not one person may hold the office of Constable and Deputy Sheriff at the same time.

Replying to your communication, I beg to advise that the office of Constable is a constitutional office, and is provided for in Section 23 of Article 5 of the Constitution of this State.

0—Atty. Gen.

A Deputy Sheriff is a bonded officer of the County in which he acts, under the provisions of Chapter 6478, Acts of 1913, Laws of Florida.

By Section 15 of Article 16 of the Constitution, it is provided that:

"No person shall hold or perform the functions of more than one office, under the government of this State at the same time."

In view of this constitutional and statutory provision, I think it very doubtful if a person could hold the office of Constable and that of Deputy Sheriff at the same time.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

COUNTY COMMISSIONERS—CHARGES AGAINST CERTAIN.

Tallahassee, Fla., September 17, 1920.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 15th instant, with which are transmitted certain petitions and affidavits in regard to the action of certain of the County Commissioners of Levy County, and asking for my opinion as to whether or not "these charges are of such nature and character as to think the Governor should require them to answer everything in writing or in person before him."

In reply I beg to say that the question of whether or not these representations are of such importance or grav-

ity as to require investigation by the Chief Executive is purely one for executive determination and is not a legal question. However, I suggest that County Commissioners are vested with authority to determine whether or not a tax levy for any purpose should be made, and if so the amount thereof. The exercise of this power will not be controlled by the courts except in cases where there is a fixed liability against a county, such as a judgment or bond issue, in which event mandamus may be resorted to for the purpose of compelling a levy.

In this case, it seems that the basis of the complaint is that the County Commissioners have not levied a general road and bridge tax. As before stated, the necessity of such a tax is for the Board to determine. The statute is not mandatory but directory and leaves the matter to the discretion of the Board.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

MUNICIPALITIES—PURCHASING MACHINE GUNS.

Tallahassee, Fla., October 5, 1920.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

Replying to your communication of the 4th instant, enclosing letter from the Adjutant General stating that the City of Miami has purchased two machine guns of the type heretofore employed by the United States Army for active combat duties overseas, and has also sworn in

several members of the American Legion to operate the guns in time of public need, and requesting that you secure my opinion as to the power of the municipality in the matter, I beg to say:

That I know of no law prohibiting municipalities from purchasing such weapons and employing persons competent to operate the same. The power has been exercised in this instance, no doubt, for the purpose of improving the efficiency of the city's police department to the end that should an emergency arise in which ordinary weapons of offense and defense, such as clubs, pistols, rifles and shotguns would prove inadequate to preserve peace, quell riots and to put down any uprising in force against the local government, resort might be had to the more efficient weapon.

Neither do I know of any law prohibiting municipalities from maintaining as a part of its police department a section composed of persons whose especial duty would be to operate such weapons when occasion demanded.

Section 672, Sub-division C, General Statutes, in my opinion, contemplates unlawful organization of private citizens, and does not apply to municipalities in the organization and equipment of their police department.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

STATE ROAD DEPARTMENT, APPOINTMENT OF
MEMBERS.

Tallahassee, Fla., October 12, 1920.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 11th inst., as follows:

"I will thank you to kindly advise me whether members of the State Road Department who were appointed prior to the session of the Legislature in 1919 and subsequent to the session in 1917, and who were not confirmed by the State Senate at the 1918 Special Session of the Legislature, or the session of 1919, are holding office by virtue of their original appointment or under the provision of the Constitution that provides for officers holding office until their successors are elected or appointed and qualified."

Replying to your inquiry, I beg to advise that it is my opinion that persons who were appointed members of the State Road Department prior to the session of the Legislature of 1919 and subsequent to the session of the Legislature of 1917 and who were not confirmed by the State Senate at either the extra session of the Legislature of 1918 or at the regular session of the Legislature of 1919, are now holding office by virtue of the provisions of Section 14 of Article 16 of the Constitution of the State of Florida, which provides as follows:

"All State, County and municipal officers, shall continue in office after the expiration of their official term until their successors are duly qualified."

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

ELECTIONS, COUNTY COMMISSIONERS REFUSING
TO PLACE NAMES ON BALLOT.

Tallahassee, Fla., October 19, 1920.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 19th inst., enclosing petition from W. L. Bryan et al., of Jasper, Fla., making complaint to you on account of the refusal of the Board of County Commissioners of Hamilton County to be printed on the ballot to be used in the general election the names of candidates nominated by the Republican party of Hamilton County. I note that you desire my opinion as to what can be done in this matter.

Replying to your communication, I beg to advise that if the candidates of the Republican party of Hamilton County were nominated, chosen or elected in any of the manners provided for in Section 212 of the General Statutes of 1906, their names should be printed on the ballot above mentioned and the County Commissioners should provide for the same.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

MOTHERS—PENSION FOR CERTAIN.

Tallahassee, Fla., October 26, 1920.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I have your letter of the 22nd inst., enclosing a letter from Mr. C. Whitlock, of Coleman, Fla., to you with reference to Mrs. J. A. Coleman, a widow with two little orphan sons, and her desire on account of her financial conditions to obtain the assistance provided for in Chapter 7920, Laws of Florida, Acts of 1919, which provides for assistance to poor mothers and other poor women having children dependent upon them for support, and note that Mr. Whitlock says that Mrs. Coleman told him that the County Commissioners stated that they appropriated no funds for the purpose of the above-mentioned law.

Replying to this communication, I beg to advise that it was the intention of the Legislature, in my opinion, that the County Commissioners of each county in the State should provide in the annual County Budget a fund sufficient to meet the reasonable and ordinary requirement provided in the above-mentioned law, and the Board of County Commissioners of the several counties should have, in my opinion, provide, in the annual budget a sum sufficient to carry out the purpose of said law.

If the County Commissioners of Sumter County do not provide in the budget any funds to meet the provisions of this law, of course there would be no funds out of which its terms could be complied with, and in the case before us I see no way by which relief could be given to Mrs. Coleman under this law during the present year.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

**ELECTIONS—PERSONS NOT PERMITTED TO GO
WITHIN FIFTEEN FEET OF POLLING PLACE.**

Tallahassee, Fla., October 28, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

Replying to yours of even date, to which is attached a letter of the 23rd instant from E. B. Epps, asking for my opinion thereon, I beg to advise that Section 224 of the General Statutes provides that no person shall be permitted under any pretext whatever to go within fifteen feet of any door or window of any polling room from the opening of the polls until the completion of the count of the ballots and certificates of returns.

Section 226 of the General Statutes provides that except as electors are admitted, one at a time, to vote, and except the Sheriff or his deputy, the Inspectors and Clerks of Election; and as many electors as there may be booths and compartments, no person shall be permitted within fifteen feet of the polling place.

The inquiry of Mr. Epps seems to refer to the canvass of the voters after the polls are closed.

Chapter 6873, Acts of 1915, provides that the Inspectors and Managers at all general and special elections shall permit and allow at all times while the ballots are being counted as many as three persons to be sufficiently near to them to see as to whether or not the ballots are being correctly read and called, and the count of the votes correctly tallied, and provides further for the punishment by fine or imprisonment for any Manager or Inspector to deny or refuse the privilege to any person.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CHIROPRACTIC—APPOINTMENT OF STATE
BOARD.

Tallahassee, Fla., October 14, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

Replying to your letter of the 11th instant, enclosing letter from F. A. Foster, D. C., of Hastings, Florida, to you, and also your letter of October 12th, enclosing letter from Geo. H. Schubert, D. C., President Florida State Board of Chiropractic Examiners, to you, both of which letters relate to the appointment and membership of Mrs. Roberta T. Graham, D. C., of St. Augustine, Florida, as a member of the State Board of Chiropractic Examiners, I beg to advise that under the provisions of Chapter 7821, Laws of Florida, Acts of 1919, I think the position taken by the two gentlemen above mentioned is correct in so far as this law is concerned, and unless Mrs. Graham has been a bona fide resident of the State of Florida for at least two years continuously, next preceding the time of her appointment, the appointment would not be in accordance with the law.

I would suggest that you make another appointment under the existing circumstances.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

FOOD AND DRUG LAW—SHERIFF'S DUTY.

Tallahassee, Fla., October 14, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of even date transmitting a letter from the Commissioner of Agriculture accompanied by certain exhibits showing correspondence by letter and telegraph between the Commissioner of Agriculture and the Sheriff of Manatee County in regard to the refusal of the latter to seize certain fruits found by the Pure Food and Drug Inspectors to be subject to seizure under the Immature Citrus Fruit Laws.

I note that you request a prompt reply giving my opinion as to the duty of said Sheriff in the premises.

In reply I beg to say that in my opinion under the provisions of the law quoted in the letter of the Commissioner of Agriculture, it is the plain duty of the Sheriffs of the several counties to receive into their custody such fruits as may be seized and attached by the Inspectors, and without prepayment of costs, if any are allowable under the statute for such service. I find no statute providing that for the particular service the Sheriff is entitled to receive any fees, the seizure and attachment of the property being accomplished by other officers, viz: the Inspectors.

I return file herewith.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

BOARD OF COMMISSIONERS STATE INSTITUTIONS—AUTHORITY TO TRANSFER CONVICTS FROM PRISON FARM TO OTHER STATE INSTITUTIONS.

Tallahassee, Fla., October 14, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

Complying with your verbal request of even date for an opinion as to the power of the Board of Commissioners of State Institutions to transfer State convicts from the State Prison Farm to other State Institutions, I beg to advise that, in my opinion, under the provisions of the last sentence of Section 1, Chapter 7833, Acts of 1919, the Board of Commissioners of State Institutions may transfer, temporarily, any State Convicts at the State Prison which are not in the class used by the State Road Department to other State Institutions in such numbers as may be used advantageously at such other institutions which are under the control and supervision of said Board.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

EXTRADITION—AUTHORITY FOR—SUFFICIENCY
OF REQUISITION:

Tallahassee, Fla., October 13, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

IN Re Extradition of John J. McCusker.

I have before me a letter from Hon. Geo. R. Hull, Deputy Attorney General of the State of Pennsylvania, to Hon. William C. Sproul, Governor of Pennsylvania, upon the above subject, and note what Mr. Hull has to say with reference to the request made by you as Governor of Florida for the extradition of John J. McCusker.

Replying to your request for my opinion upon this matter, I beg to advise that the authority for extraditing a fugitive from justice is found in the Act of Congress approved February 12, 1793. By reference to this Act it will be noted that "Whenever the Executive authority of any State or Territory demands any person as a fugitive from justice of the Executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found, or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or Chief Magistrate of the State or Territory from which the person so charged has fled, it shall be the duty of the Executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the Executive authority making such demand, or to the agent of such authority, appoint-

ed to receive the fugitive and to cause the fugitive to be delivered to such agent when he shall appear."

From an examination of the requisition papers submitted to the Governor of Pennsylvania in this case I find that there is a certified copy of an affidavit made by Susie Walden before Hon. R. Don McLeod, County Judge of Wakulla County, who is a Magistrate within the provisions of the Act of Congress, and that the said affidavit is certified to by the Governor of the State of Florida as being authentic; that the requisition papers are in compliance with the laws of Florida and the Act of Congress above mentioned.

A copy of the law which the party in question is charged with having violated may be attached to the papers for the information of the Deputy Attorney General.

The irregularities as set out in the communication of the Deputy Attorney General may be provided for under the laws of the State of Pennsylvania, but as I understand such laws would not be applicable in a case where a person is sought to be extradited from the State of Pennsylvania, but would only be applicable in the issuing of extradition papers by the State of Pennsylvania seeking to have a fugitive from justice returned to that State.

Yours very truly,

Van C. SWEARINGEN,

Attorney General.

STATE BUILDINGS—USE OF INSURANCE PROCEEDS.

Tallahassee, Fla., November 8, 1920.

*Hon. Board of Commissioners,
State Institutions,
Tallahassee, Florida.*

Gentlemen:—

In response to a motion by your Honorable Body of even date, requesting my opinion as to disposition of the proceeds of the insurance upon East Hall, one of the buildings of the State College for Women, recently destroyed by fire, I beg to advise that Chapter 6184, Acts of 1911, authorizes the Board of Commissioners of State Institutions, the Board of Control, or any other board or person, having the direct supervision and control of any State buildings, to have rebuilt or replaced any building or property owned by the State, which may be destroyed in whole or in part by fire, out of the proceeds from the fire insurance on such buildings or property.

The word "replace" means "to take the place of; to supply the want of; to fulfill the end or office of; to supply an equivalent for." It is assumed that the Legislature used the two words "rebuilt" and "replace" with full cognizance of their meaning.

In view, therefore, of the language of the statute, and its meaning, it is my opinion that the said insurance money may be used by the proper authorities in supplying the equivalent of the property destroyed.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CRIMINAL LAW—SENTENCE.

Tallahassee, Fla., November 23, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 22nd inst., to which is attached a letter from J. M. Barwick, of Sopchoppy, Fla., and note that you desire my opinion in the matter.

In reply, I beg to say that judges in criminal cases in this State may defer the imposition of sentences upon such grounds as, in their legal discretion, may be deemed fair and just, but when a valid sentence is once imposed no authority exists to suspend the execution of that sentence, save and except in the State Board of Pardons, unless, of course, a stay is had by supersedeas on appeal or writ of error.

Furthermore, the only valid sentence any judge may impose is one of fine or imprisonment, or both, and the requirement that one against whom a judgment is rendered for the crime of obtaining money under false pretenses should repay the party defrauded, is no part of a valid sentence.

If, in the case under consideration, the person charged was sentenced to pay a fine or imprisonment in default of such payment, the only way in which relief could properly be obtained would be by a resort to the Board of Pardons, or a temporary stay by supersedeas on appeal or writ of error, and any attempt of any court to suspend the execution of the sentence would be a nullity.

On the other hand, if the imposition of the sentence was deferred or suspended upon condition of good behaviour and reimbursement of the party defrauded, and

there was a failure to comply with the conditions, or either of them, the trial judge would have the power to proceed to impose sentence just as in the first instance.

I deem it proper, however, to suggest that your correspondent should understand that the requirements that the act to repay him is and could have no part of a valid sentence.

Very respectfully,
VAN C. SWEARINGEN,
Attorney General.

EXTRADITION—RETURN OF REQUISITION PAPERS WHEN APPLICATION DENIED.

Tallahassee, Fla., December 27, 1920.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 18th instant, to which is attached a letter from Robert F. Leach, Jr., State Attorney, of Baltimore, Maryland, to you, asking that you return the requisition papers in the case of William M. Jones, I beg to advise that it does not seem to me that you should return these papers for the reason that they are now a part of the files of your office, and constitute the basis upon which evidence was submitted to determine your action in this matter.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

TRADE MARKS—REGISTRATION OF.

Tallahassee, Fla., July 8, 1919.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 20th instant, enclosing several communications from Mr. Carson Farmer, of Kissimmee, Fla., relative to having a trade-mark, "Sealdsweet," registered in your office; also communication and protest from the Florida Citrus Exchange of Tampa, Fla., against the registering of this name as the trade-mark of Mr. Farmer, and note that you desire my opinion as to whether you should register said trade-mark or trade-name as applied for by Mr. Farmer.

Replying to your communication I beg to advise that Section 3170 of the Compiled Laws of Florida, 1914, reads as follows:

"To File for Record with Secretary of State.
Every such person, association or union that has heretofore adopted or used, or shall hereafter adopt or use, a label, trade-mark, term, wording, design, device, color or form of advertisement as provided in the preceding section may file the same for record in the office of the Secretary of State, by leaving two copies, counterparts or fac similes thereof, with said Secretary, and by filing therewith a sworn application specifying the name or names of the person, association or union on whose behalf such label, trade-mark, term, wording, design, device, color or form of advertisement shall be filed, the class of merchandise and a description of the goods to which it

has been or is intended to be appropriated, stating that the party so filing or on whose behalf such label, trade-mark, term, wording, design, device, color or form of advertisement shall be filed, has the right to the use of the same, that no other person, firm, association, union or corporation has the right to use either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the fac simile or counterparts filed therewith are true and correct."

From the above-quoted section of law it appears that where an application is made for the registration of a trade-mark, in accordance with law, that you would be authorized to register the same under the provisions of law applicable thereto. However, as I understand the law, the registration of a trade-mark does not determine the legal status of another's rights to the use of such trade-mark.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

TRADE-MARK—REGISTRATION OF—AFFIDAVIT.

Tallahassee, Fla., July 17, 1919.

*Hon. H. Clay Crawford,
 Secretary of State,
 Tallahassee, Fla.*

Dear Sir:—

In further reply to your communication of the 20th instant with reference to whether or not you should register for Mr. Carson Farmer, of Kissimmee, Fla., the word

"Sealdsweet" as a trade-mark, I beg to advise that upon an examination of the affidavit made by Mr. Farmer under the provisions of Section 3170 of the General Statutes of Florida, 1906, it appears that the affidavit does not conform to the statute in that it qualifies the statement of the right of any other person, firm, association, union or corporation to use the trade-mark, by using the words in said affidavit "of record" immediately following the word "right" in the fifteenth line of the affidavit. This would have the effect of making said affidavit only applicable to rights inuring to parties, by virtue of having the trade-mark recorded. It is my opinion that such a qualification in the affidavit required to be made under the section of the statute above quoted, by any one desiring to have a trade-mark registered is not contemplated by the statute and with such a qualification contained therein would cause such affidavit to fail to comply with the law and you would be authorized to refuse to register such trade-mark.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CORPORATIONS—ISSUANCE OF CHARTER.

Tallahassee, Fla., August 23, 1919.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of letter from Mr. W. C. Guthrie, Jacksonville, Florida, accompanied by proposed charter of Naomi Music Company, which is advertised to be applied

for September 25th next, and also a copy of a charter heretofore issued incorporating the same parties under the same name, letters patent having been issued October 14, 1915, and duly recorded in your office.

Both of these charters are by the same parties and are substantially different in other respects, which a comparison of the two will readily disclose.

In view of the fact that a charter has already been issued incorporating the parties under the name mentioned, I do not think that you would be authorized to issue another charter to the same parties under the same name, especially since the two charters are essentially different.

I do not think that the fact that the identity of the parties is the same will be sufficient to take the case out of the prohibition of the statute against the issuance of two charters under the same name.

Very respectfully,

VAN C. SWEARINGEN,
Attorney General.

RURAL SCHOOL INSPECTOR—FORM OF COM-
MISSION.

Tallahassee, Fla., September 18, 1919.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:—

I beg to acknowledge receipt of yours of the 12th instant with regard to the form of commission to be issued to Hon. W. M. Holloway, Rural School Inspector, and

note that you are in doubt as to the wording of the commission with respect to the term for which the appointee is to hold.

In reply I beg to suggest that the form used in the commission issued Hon. R. L. Turned as Rural School Inspector would be proper in this instance.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE ATTORNEYS—FORM OF COMMISSION.

Tallahassee, Fla., January 26, 1920.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 23rd instant, asking to be advised as to whether the Commission of David Sholtz, now State Attorney of the Seventh Judicial Circuit, should have been written for the term of four years, or for the unexpired term of Mr. Jones.

Replying to your communication, I beg to advise that Chapter 7847, Acts of 1919, created an additional Circuit known as the Seventeenth Judicial Circuit, and provided therein for the appointment of a State Attorney in accordance with the Constitution, and also provided that a State Attorney for the Seventh Judicial Circuit (the old Circuit) should be appointed and confirmed to hold office for a term as provided by the Constitution.

Chapter 7847 did not make of the old Seventh Circuit a new Circuit, nor in any way changed the status of the

officers in said Circuit. Mr. Jones, the State Attorney for the Seventh Judicial Circuit, happened to be living in a County within the new Circuit, necessitating his resigning the office of State Attorney for the Seventh Judicial Circuit, thereby leaving a vacancy in said office which should have been filled by appointment for the unexpired term. It is, therefore, my opinion that the Commission of Mr. Sholtz as State Attorney should have been issued for the unexpired term and not for the full four years' term.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

CORPORATIONS—FOREIGN—QUALIFYING.

Tallahassee, Fla., March 23, 1920.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:—

I am in receipt of your communication of the 22nd instant, accompanied by certain documents purporting to be articles of incorporation under the laws of Cuba, or some province thereof, and certain correspondence in regard thereto; and I note that you desire my opinion as to whether or not you are authorized to issue a permit authorizing said organization to transact business in Florida.

In reply, I beg to advise that in my opinion you are not authorized to issue the permit upon the showing made.

In the case of corporations organized under the laws of one of the United States seeking to transact business in this State, it is required that they file in your office duly authenticated copies of their charters or articles of incorporation. "Duly authenticated copies" mean, as I take it, copies authenticated in accordance with the provisions of Section 1 of Article 4 of the Constitution of the United States, and the Acts of Congress pursuant thereto.

In the matter under consideration, there appears to be nothing more than a certificate as to the accuracy of the English translation. In my opinion, this document should be supported by a certificate of the custodian of the original thereof, under his official seal, if he has one, and if not a recital to that effect, that it is a true and correct copy of the original; that he is the lawful custodian thereof, and that the original appears of record in his office, indicating where it may be found. There should also be a certificate by the presiding judge of some court of general jurisdiction of the republic or province, as the case may be, that the certificate of the custodian is in due form.

If the laws of Cuba are such that parties may voluntarily, and without formal sanction of any authority, provincial or national, associate themselves together into a body corporate, and such association, as in this case, has been consummated agreeably to the laws of that country, you would, in my opinion, be authorized to take cognizance of such laws and to recognize the validity of the organization thereunder of this corporation upon satisfactory proof thereof in the form of an affidavit by some person competent to make oath thereto, and who is familiar with the laws of the land.

I return the file herewith.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CORPORATIONS—FORT PIERCE EXCHANGE.

Tallahassee, Fla., April 13, 1920.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of even date to which is attached certain papers with reference to the Fort Pierce Exchange.

In reply, I beg to advise that, in my opinion, the proposed charter should substantially follow the requirements of corporation charters generally, and that this particular charter is defective in that it fails to state the residence and number of shares subscribed by each of the subscribers.

Chapter 7384 appears to be very vague and indefinite, but I fail to find any authority in it under which a substantial compliance with the general incorporation laws may be safely dispensed with except in so far as the same are expressly modified by the Chapter mentioned.

I return all papers herewith.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

POLL TAXES—TIME FOR PAYMENT.

Tallahassee, Fla., May 5, 1920.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:—

I have before me a copy of a letter from your office dated April 30th, 1920, to which is attached a letter dated April 28th, 1920, to you from the Tax Collector and Supervisor of Registration of Sumter County, in which the fact is expressed that Saturday, May 15th, is the last day for the payment of poll taxes as a qualification for voting in the June primary.

Assuming that you desire an expression from me, I beg to advise that this office has recently set out an opinion to the Tax Collectors of the State to the effect that May 22nd is the last day for the payment of poll taxes, and I know of no reason why that opinion should be changed.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

ELECTIONS—CERTIFYING NAMES OF CANDIDATES TO COUNTY COMMISSIONERS.

Tallahassee, Fla., June 18, 1920.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:—

In the matter of your duty with reference to the certifying to the several Boards of County Commissioners of the names of the candidates who have been nominated for State or Federal offices by other methods than in the General Primary Election, particularly with reference to the communication of Mr. J. W. Archibald, of Jacksonville, in regard to the so-called Republican party, I beg to advise that Sections 212 and 215 of the General Statutes seem to require the certifying of such names when they have been nominated by any "caucus, convention, mass-meeting, primary election or other assembly of any political party or faction."

The term "political party" is defined in Chapter 6469, Laws of Florida, but, in my opinion, applies only as determining what parties as such shall be permitted to participate in the biennial primary election, and does not have the effect of repealing the named sections of the General Statutes under which it would be your duty to certify the names of all candidates whose nominations are properly certified to you, and this regardless of the party designation or the number of such candidates claiming nomination under the same party name. For example, if there are two or more factions of the party known and generally recognized as the Republican party, and each of them properly certifies a nomination, each would be entitled to have the nominees certified by you to the several Boards of County Commissioners.

In regard to the recent decision of the Supreme Court in the case of *Merrill v. Gerow*, I beg to suggest that the point there involved and decided was that Republican Executive Committeemen, nominated or elected in 1918 under the Bryan Primary Law, did not, in 1920, subsequent to an intervening General Election in which the Republican party did not poll five per cent. of the total vote, thereby losing its status as a political party, have any legal status which could be recognized by the courts or rights as such that could be enforced. While the decision, in effect, holds that there has been and is now no Republican party in Florida entitled to recognition by the courts, it did not affect the individuals calling themselves members of that party, nor deprive them of any rights they, as individuals or as aggregations of individuals acting through the instrumentality of a caucus, convention, mass-meeting, or other assembly, have or might choose to exercise under the provisions of Section 212 and 215 of the General Statutes.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

ELECTIONS—REGISTRATION BOOKS—CLOSING.

Tallahassee, Fla., July 14, 1920.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:—

Replying to your oral request for my opinion as to the date upon which the Registration Books should close for the General Election, which is to be held on November

2, 1920, I beg to advise that under the provisions of Section 183 of the General Statutes 1906, it is provided that the Registration Books shall close on the second Saturday in the month preceding the date the election is held.

Under the opinion of our Supreme Court in the case of *State ex rel. v. White*, reported in 73 Florida 426, 74 Southern 486, it is my opinion that the date upon which the Registration Books should be closed is October 16, 1920. This is in conformity with an opinion of this office upon a similar question relating to the Primary Election held on June 8, 1920.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

CORPORATIONS—DISSOLUTION OF.

Tallahassee, Fla., July 2, 1920.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:—

In response to your verbal request for my opinion as to the dissolution of corporations organized in this State, which request was accompanied by two affidavits to the effect that Henderson-Mathews Naval Stores Company, and Bullard Naval Stores Company, both Florida Corporations, have been dissolved by unanimous vote of their stockholders, I beg to say that these documents are not sufficient evidence of a dissolution, and that the only competent evidence would be a certified copy of an order of a Circuit Judge duly made and entered in a proceed-

ing under Section 2679, *et seq.*, of the General Statutes, which prescribe the method of dissolving corporations in this State.

I am returning herewith the documents mentioned.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

CORPORATIONS—FARMERS' CO-OPERATIVE
ASSOCIATIONS.

Tallahassee, Fla., August 5, 1920.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:—

I am in receipt of communication addressed to you from T. S. Trantham, of Ocala, in which it is suggested that you obtain my opinion upon two points with reference to the organization of the Farmers' Co-operative Association of Marion County, copy of the proposed charter of which is attached to the communication.

The points upon which my opinion are desired are: First, is the proposed charter subject to the payment of charter fee of \$2.00 per thousand of the capital stock, and, second, will the proposed corporation be required to comply with the law governing the formation of insurance companies.

In reply, I beg to advise, first, that in my opinion the Association is subject to the payment of charter fees. Second, that the insurance business cannot be carried on

without compliance with the laws governing the organization and incorporation of insurance companies generally.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

**CORPORATIONS—AUTHORITY TO WITHDRAW
AMENDMENTS TO CHARTER, ETC.**

Tallahassee, Fla., August 4, 1920.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:—

Ford Motor Company, a Michigan Corporation.

Ford Motor Company of Delaware, a Delaware Corporation.

Ford Motor Company, a Delaware Corporation.

My advice is sought as to whether or not the above-named Ford Motor Company, a Michigan Corporation, heretofore issued a permit to do business in Florida, may be permitted to withdraw, and, if so, what should be the procedure; also, as to whether or not you should accept an amendment to the charter of the Ford Motor Company of Delaware, a Delaware Corporation, changing its name to Ford Motor Company, a Delaware Corporation.

From correspondence between your office and the offices of the Corporations involved, as well as communications direct to this office, I understand that Ford Motor Company, the Michigan Corporation, which, to use the language as a member of the Legal Department of Ford Motor Company of Delaware "for all practical purposes is

extinct in the State of Michigan," its parent State, and which "having been considered as non-existent" in that State, at some time in the past was absorbed by Ford Motor Company of Delaware, a Delaware Corporation, the latter assuming all liabilities of the former; that both the last-named corporations held at the same time permits to do business in Florida, and that Ford Motor Company of Delaware has, by amendment, changed its name to Ford Motor Company, a Delaware Corporation.

If my understanding of the matter is correct, then your position, pursuant to advice from this office, is that you are prohibited by statute from accepting an amendment to the charter of Ford Motor Company of Delaware, changing its name to Ford Motor Company, a Delaware Corporation, because there is a corporation of the same name (Ford Motor Company, a Michigan Corporation) now enjoying a permit to do business in Florida.

None of the suggestions offered by the interested parties satisfies me that the position I formerly took in the matter should be altered. Nor is there a satisfactory solution of the difficulty which is due to the absence of statutory regulations.

I see no way around the obstacles, unless Ford Motor Company, the Michigan Corporation, files in your office satisfactory evidence of its dissolution, or unless Ford Motor Company, a Delaware Corporation, or as it was originally named, Ford Motor Company of Delaware, a Delaware Corporation, will file in your office, as a part of the basis of its application for a permit, or its right to acceptance by you of the amendment changing its corporate name, a duly authenticated copy of the instrument by which the latter acquired and assumed the assets and liabilities of Ford Motor Company, the Michigan Corporation, excerpt from which appears in the letter to this office dated July 22, 1920, from Edgar J. Matz, of the Legal Department of the Ford Motor Company of Delaware.

The latter alternative is, to my mind, the less satisfactory and desirable of the two, and I have suggested it purely in order to indicate to you what may be done in the premises, provided, of course, you feel so inclined.

Until one of the suggestions above offered are acted upon, I am of the opinion that you should not file the amendment to the charter of Ford Motor Company of Delaware, a Delaware Corporation, changing the name to Ford Motor Company, a Delaware Corporation.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

ELECTIONS—FEMALE ELECTORS—AGE.

Tallahassee, Fla., September 27, 1920.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:—

Complying with your verbal request for my opinion as to whether or not an elector applying for registration for the coming General Election is required to give her or his exact age, I beg to advise that in my opinion any elector who takes the oath prescribed by Section 178 of the General Statutes, "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and of the State of Florida; that I am 21 years of age and have been a resident of the State of Florida for twelve months, of this County for six months; that I am a citizen of the United States, and that I am qualified to vote under the Constitution and

laws of the State of Florida," is entitled to registration, and that the Registration Officers have no authority to require any elector to give his or her exact age or age in years as a prerequisite to registration.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATUTES—DISTRIBUTION OF.

Tallahassee, Fla., December 27, 1920.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:—

Replying to your request of this date for my opinion as to whether or not persons who were elected as members of the House of Representatives of the Legislature of Florida at the November election, 1920, are entitled to have given to them a copy of the General Statutes of 1906, or a copy of the Revised General Statutes of Florida (By Calkins), I beg to advise that I do not understand that there is any authority in law for such distribution of the General Statutes of 1906, or the Revised General Statutes of Florida (By Calkins).

Section 10 of Chapter 5372, Laws of Florida, Acts of 1905, does not provide for distributing copies of the General Statutes to members of any Legislature, except those of the Legislature of 1905. Section 18 of Chapter 7838, Laws of Florida, Acts of 1919, does not provide for the distribution of copies of the Revised General Statutes of Florida to other members of the Legislature, than

those who were members of the Legislature of 1919. Section 658, General Statutes of 1906, has reference only to the Statutes passed by each session of the Legislature.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

MOTOR VEHICLES — FURNISHING NUMBER
PLATES FOR VEHICLES EXEMPT FROM
LICENSE.

Tallahassee, Fla., January 13, 1919.

*Hon. Ernest Amos,
Comptroller,
Capitol.*

Dear Sir:—

I am in receipt of your communication of the 13th instant asking for my opinion as to whether or not you are authorized or required to furnish number plates for the registration of motor vehicles which are exempt from paying the license and registration fees required under the provisions of Chapter 7737, Laws of Florida, approved December 6, 1918.

Replying to your communication, I beg to advise that the paragraph next to the last in Section 1 of this law provides as follows:

“This Act shall not apply to any motor vehicles owned and operated by the United States Government, the State of Florida, the Counties of this State, and the Cities and Towns in this State when said vehicles are used exclusively by the United States Government, State of Florida, the Counties

of this State, and the Cities and Towns of this State, nor to motor vehicles owned and operated exclusively by the school authorities in transporting school children to and from schools in this State; said motor vehicles to display some distinguishing mark of identification."

This provision of the Act expressly provides that it shall not apply to motor vehicles owned by those therein mentioned, and further provides that said motor vehicles shall display some distinguishing mark of designation.

I take it that from the above provision of law there is no duty laid upon you as Comptroller thereunder to provide and furnish number plates for such automobiles as are exempt from the payment of the license and registration fees provided for in this law.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

MOTOR VEHICLES—CANCELLATION OF
REGISTRATION.

Tallahassee, Fla., February 24, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 17th inst., as follows:

"Oftimes I have inquiries from persons who have made application to register their machine, asking that same be cancelled, and money refunded for one reason or an-

other, usually where the machine sought to be registered has been disposed of and another acquired, which is also desired to be registered.

"I will thank you, therefore, to advise me if I have authority, under the law, to cancel applications of registrants and refund the registration fees under instances of this kind."

Replying to your communication I beg to advise that there does not appear to be any provision in the law specially authorizing the cancellation of applications to register motor vehicles and refund the registration fee. However, I think that where an application has been made to register a motor vehicle, and before the same has been registered, you receive a request to cancel the application that you have the authority to do so. Of course if there should be any errors or mistakes made in the registering of motor vehicles or issuing certificates to the owners thereof the same may be corrected by you.

Yours very truly,

VAN C. SWEARINGEN.

Attorney General.

COUNTY OFFICERS—REPORTS TO COMPTROLLER.

Tallahassee, Fla., March 12, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 10th instant, as follows:

"Section 3 of Chapter 6815, Laws of Florida, provides that the matters and things in each report made

by the various County Officers, under the provisions of Sections 1 and 2 of said Act, shall be published one time in a newspaper published in the county in which such report originated.

"The Legislature of 1917 passed an Act fixing the net income of County Officers, based upon the reports made under the Act of 1915, above referred to, and a number of County Officers are of the opinion that the legislative purpose, as set out in the Act of 1915, was accomplished when the law was amended in 1917, fixing the compensation of different County Officers at a certain percentage of the fees and leaving the matter to be regulated by the Board of County Commissioners.

"The question that I desire you to decide for me is as to whether or not the counties are to be put to the expense of publishing these reports made under the Act of 1915, notwithstanding the passage of the Act of 1917.

"Kindly let me have your opinion at your earliest convenience."

Replying to your inquiry, will advise that Chapter 7334, Laws of Florida, Acts of 1917, does not directly or by implication repeal the provisions in Chapter 6815, Laws of 1915, providing for the publication of the reports required to be made to the Comptroller by County Officers who receive all, or in part, their compensation in fees. Therefore, until such time as this provision of the law is repealed or amended, it should be carried out.

Respectfully submitted,

VAN C. SWEARINGEN.

Attorney General.

MOTOR VEHICLES—REGISTRATION—CANCELLING.

Tallahassee, Fla., April 1, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

Your letter of the 27th instant duly received in reference to your authority to refund fees paid for automobile license under two conditions submitted in your communication as follows:

1. "On March 17th the Company writes me: 'We find that this truck is about gone and too small for our business, and it has not been used since last part of 1918. For this reason tags have never been put on car,' and asking that a refund of fee paid for registration be made."

2. "I also have a letter from Mr. H. W. Fleming, 1406 E. Church St., Jacksonville, that on January 7th, he had the misfortune to have his car stolen. The car had his old license on it at the time, but his new license did not arrive until several days afterwards. Now, he wishes to know if he secures another car if he can have the tags assigned to the stolen car applied to new car; that is to say, if he can have application canceled and refund made on account of same to be used in the registration of said machine."

Answering both propositions will state that I do not think it was the intention of the Legislature nor the purpose of the law to require persons to pay out money for something and not get something in return. You, of course, know that the construction placed upon a statute

by a department which is clothed with authority to administer such statutes has the force of law under the ruling of our Supreme Court.

If you deem it advisable in the first instance to cancel registration application No. 5104 and make a refund, or cancel the former certificate and transfer tags to another car of the same type, the law and justice of the case would seem to support that view.

In the second instance mentioned above, it would seem to be in accord with justice and not opposed to the law for you in the exercise of your discretion in the administration of the statute to cancel the former certificate issued to Mr. H. W. Fleming, and assign the said tags to another car of the same type.

The sole purpose of the statute in question was to require persons who use the streets and highways of this State to pay at least a portion of the expense of its construction and maintenance.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE VOCATIONAL EDUCATION—TRAVELING
EXPENSES OF STATE DIRECTOR.

Tallahassee, Fla., June 25, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter requesting my opinion as to the payment of certain bills covering traveling expenses, etc., out of the appropriation made by Section 6

of Chapter 7376, Laws of Florida, and also have the letter from the Federal Board of Vocational Education with your letter, giving the construction of that Department of the Act of Congress (Public No. 347, 64th Congress).

An examination of the Act of 1917 making appropriation of funds of the State for vocational education in an amount equal to the amount that the United States Government pays over to the State for this purpose and limiting the amount to \$15,400 available July 1st, 1917, and \$18,840.00 available July 1st, 1918, or so much thereof as may be necessary, shows that the Legislature made the appropriation of State money "for the purpose of providing for the teaching of agriculture, home economics and industrial subjects provided for in the said Act of Congress to which assent is hereby given, and that the State of Florida may receive from the Federal Government the amount allowed for salaries of teachers in the said subjects."

You will see that the above provision of the law limits expenditures under Chapter 7376 to the salaries of teachers.

In the matter of the expenditures of the moneys received by the State from the United States under the Act of Congress (Public No. 347, 64th Congress), it appears that said Act provides that the money shall be used "for the purpose of making or co-operating in making the study, investigation and report provided for in Section 6 of this Act, and for the purpose of paying the salaries of the officers, the assistants, and such office and other expenses as the Board may deem necessary for the execution and administration of this Act," and it appears from the letter from Hon. C. A. Prosser, Director of the Federal Board for Vocational Education, that he recognizes a distinction between the provisions of the State law and the National law, and that he does not question the use of the Federal money for the purposes enumerated in the Act above quoted. I am, therefore, of the opinion

that while the expenditures for traveling and incidental expenses cannot be paid out of the appropriation made by the State Legislature, such expenses can be paid out of the money received from the United States Government under the Act of Congress above mentioned.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

SHERIFFS—FEES.

Tallahassee, Fla., June 25, 1919.

*Hon. Ernest Amos,
 Comptroller,
 Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 23d inst. as follows:

“Under recent Act of the Legislature, amending the Sheriff Fee Bill, I note that it provides that: ‘The State will furnish transportation’ for Sheriffs conveying boys and girls to the Reform Schools at Marianna and Ocala. I will be glad to have your opinion as to the constitutionality of this part of the law, and if you are of the opinion that such expenses are to be paid by the State, I will be glad to have you advise me from what appropriation the same are to be made.”

Replying to your communication I beg to advise that the Act to which you refer is Chapter 7886, Laws of Florida, Acts of 1919, approved May 17, 1919, the title to which is as follows: “An Act Fixing the Compensation of

the Sheriffs of the Several Counties of the State of Florida." The provision of this law which you quote is found at the end of a paragraph in Section 4 of the Act which reads as follows:

"State Prison and Industrial School for Boys and Girls; Conveying prisoners to, \$4.00 per day for himself and \$2.00 per day for each guard actually necessary, the necessity to be determined by the Comptroller. The State will furnish transportation."

This part of the Act (The State will furnish transportation) does not seem to be covered by the title to the Act, as it is in no wise a part of the compensation or fees of Sheriffs. There is no appropriation made in the Act for paying this transportation, even were this provision covered by the title, and unless an appropriation has been made for paying it there would be no funds available for such purpose and of course this provision of the Act could not be carried out.

In this connection I beg to call your attention to Section 9 of Article 16 of the State Constitution, as amended at the general election held in 1894, which provides that:

"In all criminal cases prosecuted in the name of the State, when the defendant is insolvent or discharged, the legal costs and expenses, including the fees of officers, shall be paid by the counties where the crime is committed; and all fines and forfeitures collected under the penal laws of the State shall be paid into the county treasuries of the respective counties as a general county fund to be applied to such legal costs and expenses."

It naturally follows that the fees and costs of the Sheriffs, in performing whatever service is necessary to comply with the law in connection with the sentence of any person to a penal institution, which would include the State Prison and Industrial Schools for Boys and Girls, would be payable under the same provision of the law

as other costs in criminal cases are paid, and the fine and forfeiture fund is the proper fund against which bills for such services should be rendered.

Yours very truly,

VAN C. SWEARINGEN.

Attorney General.

STATE VOCATIONAL EDUCATION—HOW TRAVEL-
ING EXPENSES OF DIRECTOR PAID.

Tallahassee, Fla., June 5, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of May 31, as follows:

“Pursuant to promise to Mr. Shelton Phillips, I am writing you for an opinion involving the payment of bills out of appropriation made under Section 6 of Chapter 7376, Acts of 1917. In other words, I have declined to pay bills approved to be paid out of this appropriation for traveling and incidental expenses because, in my judgment, only ‘salaries of teachers’ are authorized to be paid thereunder. If I am incorrect, I will be very glad to know it.

“I have also declined to pay traveling and incidental expenses out of the appropriations made by the Act of Congress for the same purpose, and will thank you to have your opinion covering appropriations under said Act of Congress as well.”

Replying to your communication I beg to advise that Section 9 of the Act of Congress, entitled “An Act to Provide for the Promotion of Vocational Education; to

Provide for Co-operation with the States in the Promotion of Such Education in Agriculture and the Trades and Industries; to Provide for Co-operation with the States in the Preparation of Teachers of Vocational Subjects; and to Appropriate Money and Regulate its Expenditure," provides in part as follows:

"Sec. 9. That the appropriation for the salaries of teachers, supervisors, or directors of agricultural subjects and of teachers of trade, home economics, and industrial subjects shall be devoted exclusively to the payment of salaries of such teachers, supervisors, or directors having the minimum qualifications set up for the State by the State Board, with the approval of the Federal Board for Vocational Education. * * *"

Construing this provision of the Act of Congress in connection with Chapter 7376, Laws of Florida, Acts of 1917, it is my opinion that appropriations made under the provisions of these Acts are not available for the purpose of paying traveling and incidental expenses.

Yours very truly,

VAN C. SWEARINGEN.

Attorney General.

INTOXICATING LIQUORS—CLUB LICENSE—RE-
FUND OF UNUSED PORTION OF.

Tallahassee, Fla., July 8, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of yours of the 7th instant, to which is attached a letter from Mr. L. W. Nelson, St:

Augustine, and other papers, and note your request for my opinion as to whether or not Chapter 5479, Acts of 1905, could be applied in the case presented by Mr. Nelson, and if, under the provisions of the Act, you would be authorized to issue warrant on the State Treasurer to refund the unused portion of club licenses.

So far as the Act mentioned is concerned, I am of the opinion that it could not be applied unless a wet and dry election has been held which resulted in the County going dry, as the Act simply provides for refunding the unused portions of the licenses in the event of an election under the provisions of Article XIX of the Constitution. I do not think the law contemplated any distinction between clubs and the licenses issued thereto, and those engaged in the traffic and who sell to the public generally.

While the above is in answer to your specific inquiry, I deem it my duty to call your attention to Section 6, of Chapter 7288, Laws of 1917; also to Section 19, of Chapter 7736, Laws of 1918, Extraordinary Session, both of which, in my opinion, are applicable.

I return all enclosures herewith.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE OFFICERS—SALARIES—PAYMENT OF MONTHLY.

Tallahassee, Fla., July 15, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Florida.*

Dear Sir:—

Your inquiry of the 2nd instant as to whether or not you would be authorized to carry out the provisions of

Chapter 7816, Acts of 1919, in view of the provisions of Section 3 of Article XVI of the Constitution and the Advisory Opinion of the Supreme Court, 74 Fla. 250, requires my opinion as to the constitutionality of the Act mentioned.

The importance of the matter, affecting as it does the financial convenience of many public servants, demands, and I have undertaken a more or less exhaustive examination of the authorities touching the point in question, having in mind the cardinal rule that a legislative act must be sustained unless it contravenes some provision of the organic law, and that all reasonable doubts must be resolved in favor of its validity.

However, I am not permitted to view this question as one of first impression, and therefore to construe the constitutional provision as it bears upon the Act mentioned, ignoring the effect of the Advisory Opinion for the reason that the Advisory Opinion in so far as it determines the scope of the constitutional provision becomes a part and parcel thereof, and as such must be given full force and effect. In other words, we are bound now to read Section 3, Article XVI, as the same has, in effect, been amended by this judicial construction, even though we might have disagreed with the Court's views as set forth in the Advisory Opinion.

I have been and am aware that the Court was not passing upon a statute because no legislative attempt, such as Chapter 7816, had been made at the date of the opinion, and that had there been such an attempt the Court would not and could not have considered the same in an advisory opinion, but the opinion rendered is of positive authority and is to be so respected in so far as it is coextensive with the matters now before us for consideration.

We are justified, and, indeed, we are bound to assume that the Supreme Court applied the well established rules of construction to this provision; that it resorted to

such extrinsic aids as were proper; in fact that it weighed and considered all matters and things proper and necessary to a right conclusion.

With this assumption, then we are permitted to mention some of the matters and things that must have entered into the Court's consideration.

State constitutions are limitations of power and the legislatures possess all legislative powers not expressly or impliedly prohibited by the Constitution.

Our Constitution contains no express inhibition against the Legislature prescribing payment of the salaries of officers more frequently than at the end of each quarter, and if any such inhibition is to be found it must be by implication. Whenever in our Constitution the salary of an officer was fixed the year was made the basis. The assumption is safe that the framers of the Constitution, and those who adopted it as their organic law, had in mind, and carefully considered the fact that these public servants would depend more or less upon the emoluments of their respective offices for their maintenance. Also that while their salaries were fixed upon such a basis their convenience might better be served by making these annual salaries payable at more frequent intervals than once each year because the Article in which this provision appears is the Sixteenth, and last of the original Constitution of 1885, and is entitled "Miscellaneous Provisions." The position this provision occupies with respect to the other provisions of the Constitution presumably was considered significant. The title of the Article, and the nature of its several provisions generally, show that they were after-thoughts, the taking up as it were of each of the several departments and subjects already treated under its particular heading supplying omissions and making additions to the end that the completed instrument might present a fundamental rule of action regulating the rights and duties of the whole com-

munity. In other words, this Article was the cap-stone of a structure whose foundation was the bill of rights.

Another element that presumably was considered by the Court is better stated in 12 C. J. 712, as follows:

"Contemperaneous or practical construction of an abiguous provision of a constitution by the legislative or executive departments of the government is always important, and is frequently of controlling influence in determining its meaning. The value of such practical construction is especially recognized where the participants in it are men of repute as lawyers and judges. In doubtful cases the courts will often apply such construction as of course, or will yield to it as a matter of policy. It is evident that to reverse a construction put on a constitutional provision by a department charged with its execution, after it has received such practical construction for any length of time, would be to occasion great injury to those who would be affected by such a change; and it is to avoid such injustice that courts have often yielded to policy and expediency in adopting practical constructions of constitutional provisions and statutes by the other department of the government, even though erroneous; and in view of these considerations, in all cases where there is doubt as to the meaning of such provision or statute, courts will adopt and follow contemporaneous and practical construction by the other departments."

The rule just quoted, however could have been applied only in the event of ambiguity in the provision construed. Certainly there was a doubt, inspired probably by a long acquiescence in a practical construction in the mind of the Chief Executive, else he would not have requested the opinion. Assuming then that the provision in question was not clear in its meaning, and the Court so considered it, the Court was justified and presumably did

bring to consideration this extrinsic matter of practical construction, if there has been such, and that there has is a matter of common knowledge,—certainly to those who have been affected thereby. This presumption becomes safer in view of the fact that the Supreme Court as constituted at the time the Advisory Opinion was rendered was made up of able jurists who were formerly eminent practitioners at the bar, and a majority of whom have been departmental heads, and as such participated and acquiesced, passively of course, in a construction of this provision which was altogether unauthorized and violative of its true intent, and which, when presented for judicial determination, was found to be irregular, and possibly unlawful.

On the other hand, let us assume the opposite position, one more consonant with our knowledge of the English language, and the ordinary meaning of words. That is to say, that there is no ambiguity in this provision of the Constitution in the sense that it is doubtful, dubious, uncertain, unsettled, indistinct, indeterminate or indefinite. In that case we have no alternative other than that the Advisory Opinion is but an elaboration of the provision involved, and a determination by the Supreme Judicial Tribunal of the State of its true import, a determination unaided by any matters extrinsic of the Constitution itself as a whole, and at that by implication and not by express words. Were it not for the implied meaning which the Advisory Opinion placed upon this provision, much of the difficulty which I have met with in my study of this question would have been obviated. Many of the courts, especially the Supreme Court of North Carolina, more recently in the case of *Beckett, Governor, v. State Tax Commission*, 99 S. E. 415, hold to the doctrine that implication may be resorted to to sustain a statute, but not to destroy it. I am constantly mindful that our Supreme Court was not in this Advisory Opinion construing a statute, but a long line of cases in this State

furnishes ample precedent for the rule that constitutional provisions must be construed according to their implied as well as their express meaning, and it is immaterial that our Court was merely construing a provision of the Constitution without regard to a statute, affect having been given to the implication none the less.

Taking Section 3, Article XVI, with its full import as determined in the Advisory Opinion, and considering it with the respect and reverence due that solemn instrument of which it is a part, we have to determine whether or not it is a limitation upon the Legislature and whether the time and mode when and in which officers' salaries are payable is exclusive. The mode prescribed in this provision is "Upon his own requisition," and in connection with Section 24, Article IV, "Upon the order of the Comptroller, countersigned by the Governor," the latter provision having been held to prescribe the only manner or mode in which the Treasurer shall disburse the State Funds. *State v. Croom*, 48 Fla. 176; 37 So. 303; *State v. Knott*, 48 Fla. 118, 37 So. 307.

The time prescribed is "quarterly." The Supreme Court says that Article XVI, Section 3, is mandatory. Mandatory is defined and illustrated in Black's Law Dictionary as "Containing a command; perceptive; imperative; peremptory. A provision in a statute is mandatory when disobedience to it will make the act done under the statute absolutely void; if the provision is such that disregard of it will constitute an irregularity, but one not necessarily fatal, it is said to be directory." The rule laid down in *Cooley's Const. Limt.*, 7th Ed., is as follows: "But the courts tread upon very dangerous ground when they venture to apply the rules which distinguish directory and mandatory statutes to the provisions of a Constitution. Constitutions do not usually undertake to prescribe mere rules of proceeding, except when such rules are looked upon as essential to the thing to be done; and they must then be regarded in the light of limitations up-

on the power to be exercised. It is the province of an instrument of this solemn and permanent character to establish those fundamental maxims, and fix those unvarying rules by which all departments of the government must at all times shape their conduct; and if it descends to prescribing mere rules or order in unessential matters, it is lowering the proper dignity of such an instrument, and usurping the proper province of ordinary legislation. We are not, therefore, to expect to find in a constitution provisions which the people, in adopting it, have not regarded as of high importance, and worthy to be embraced in an instrument, which, for a time at least, is to control alike the government and the governed, and to form a standard by which is to be measured the power which can be exercised as well by the delegate as by the sovereign people themselves. If directions are given respecting the times or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only; and we impute to the people a want of due appreciation of the purpose and proper province of such an instrument, when we infer that such directions are given to any other end. Especially when, as has been already said, it is but fair to presume that the people in their Constitution have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, and with a view to leave as little as possible to implication."

I am aware that the Court says, "It would seem to follow that it would be irregular, if not unlawful, for the Comptroller to issue a warrant, and for you, as Governor, to countersign same," etc., which would seem to convey the idea of certain irregularity and very probable illegality. But the Court had before said that the provision was mandatory, thus disposing of any doubt as to its nature. It could not have been both mandatory and directory, and it is only the latter that will permit a mere ir-

regularity in its observance, but constitutional provisions are almost universally held to be mandatory. Our Supreme Court has simply followed its own and other worthy precedents in that regard.

The Supreme Court also uses this language: "As it cannot be said that the Constitution intended that any part of this fixed salary should be *paid* or *payable* prior to its having been earned by the office holder, it follows that the annual salaries provided for shall fall due and become payable in four equal amounts *at the end* of each quarter of each year *and not before*." Can language be more plain? "Cannot be said that the Constitution," means I take it that the Court finds that the Constitution did not intend "that any part of this fixed salary should be paid or payable," thus by the use of the disjunctive differentiating between "paid" and "payable," but including both within the limitation. These words are not necessarily synonymous, the word "paid" being past tense of the word "pay," which means to satisfy; to discharge one's obligation to; to compensate; to remunerate; to deliver the amount or value to the person to whom it is owing." Words and Phrases, 2d Series, 924.

But as stated, the Court places both within the limitation in effect saying that not only did the Constitution not intend that any part of these salaries should be paid, meaning capable of being paid; suitable to be paid; admitting or demanding payment; justly due; legally enforceable; but that it also did not intend that any part of them should be paid as the word is defined above. But the Court goes further and says, "It follows that the annual salaries provided for shall fall due and become payable *at the end* of each quarter of each year *and not before*." But for the fact that the Court had previously placed "paid" and "payable" within the limitation, the language just quoted as the phrase "fall due and become

payable" is there used might, with some degree of reasonableness, be said to have left an avenue through which we might rescue this legislative act from constitutional infirmity. The word "due" does not always mean "presently payable, or "legally enforceable; but may mean, and we would be entitled to adopt the most favorable definition, "A simple indebtedness without reference to the time of payment in which it is synonymous with owing and includes all debts whether payable in praesenti or in futuro." 3 Words and Phrases, 2213.

However, as we have seen, the Court had already said that the Constitution did not intend that any part of these salaries should be "paid," neither that they should be "payable," and we are not justified in attaching a weight or giving a meaning to the word "due" contrary to the sense and connection in which it was used. Quoting further from the opinion "shall fall due and become payable *at the end of each quarter of each year and not before.*" Here, to my mind, is a pronouncement reading into the Constitution a positive prohibition against legislative action in any way altering the time prescribed in the Constitution when these salaries should be paid or become payable.

We have then a mandatory provision in the Constitution, which, according to the opinion of our Supreme Court, and reading that opinion into the provision as a correct construction thereof, means this: "The salary of each officer shall be payable quarterly on his own requisition (provided it is not the intention of this provision that such salaries or any part thereof shall be paid or become legally enforceable until the end of each quarter of each year)."

Does the above amount to an inhibition against legislative action such as is attempted by Chapter 7816? In my opinion, it does, and that therefore the Chapter men-

tioned is unconstitutional and void, and you would not be authorized to carry out its provision.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

TAXATION—CORRECTION OF ASSESSMENT ROLL.

Tallahassee, Fla., August 21, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 20th instant, to which are attached copies of letters from the Clerk of the Circuit Court of Bradford County and the Tax Assessor of Hernando County with reference to the changes necessary to be made in their respective assessment rolls due to the corrected return of railroad taxes filed by the State Railroad Assessing Board, and asking for my opinion as to whether or not the Tax Assessors or the Boards of County Commissioners may make corrections of the assessment rolls so as to take care of this situation, and if they may in fact reassemble and make up a new budget and amend their levy for this year without affecting the legality of the assessment.

Replying I beg to say that in my opinion the respective Tax Assessors should make the corrections on the assessment rolls and acquaint their Boards of County Commissioners with the fact of such corrections, and that it would then become the duty of the Boards of

County Commissioners to reassemble and readjust their budget and make the same up anew by changing their levy, if the situation demands it. This action, in my opinion, would not render illegal the assessment.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

LICENSE—LESSEE OF RAILROAD TRACK NOT
SUBJECT TO—OWNERSHIP BASIS OF LI-
CENSE.

Tallahassee, Fla., October 3, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 2nd instant, to which is attached a letter from Mr. Murray R. Hubbard, Tax Commissioner, with reference to license taxes to which certain railroads are subject under Section 43, Chapter 6421, Acts of 1913, and note that you desire my opinion as to whether or not a railroad company "operating regular trains over a leased track is to all intents and purposes using 'its railroad tracks'" in contemplation of the Section mentioned, and therefore subject to the license tax therein prescribed.

In reply I beg to advise that it is my opinion that the liability of a railroad company under this Section depends upon ownership rather than control for the purpose of operating merely. I base this view upon that language of the statute which fixes the basis for the lia-

bility for each mile of its railroad track "as shown by the last assessment of the said railroad company for property taxation." The assessment for property taxation being based upon ownership, it necessarily follows, in my opinion, that the license tax is in turn based upon such assessment.

In this connection, I might say that I have, within the last few days, had occasion to unofficially advise the Fellsmere Railroad Company to the same effect, and for your information I enclose a copy of my letter to that Company.

I return the letter from Mr. Hubbard herewith.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

SCHOOLS—SPECIAL TAX SCHOOL DISTRICT
FUNDS—SECURITY FOR DEPOSITS.

Tallahassee, Fla., October 4, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of yours of the 19th ult., asking for my opinion as to whether or not the acceptance from depositories of Liberty Bonds in lieu of surety bonds as securities for deposits of Special Tax School District funds would violate the provisions of Chapter 6967.

In view of the fact that Chapter 6932 and Chapter 6967 were approved the same day, and therefore became

a part of our statute simultaneously with each other; that the former's actual operation began on the first Monday in January, 1917, and the latter became operative immediately upon its approval, both Acts must, if possible, be reconciled and rendered effective; and since there is, in my opinion, no repugnancy between the two, I am of the view that the provisions of the former providing for security in the form of a surety bond, or Federal, State, County or Municipal bonds are of the same dignity as the provisions of the latter.

From the view as above expressed, therefore, the Comptroller and County Boards of Public Instruction would not be violating the letter of the law, and certainly not the spirit and intent thereof in accepting Liberty Bonds in lieu of a surety bond as security for deposits of the funds mentioned.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

OFFICERS—STATE AND COUNTY TO MAKE
PROMPT PAYMENT OF COLLECTIONS MADE
BY THEM.

Tallahassee, Fla., September 18, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 9th instant, as follows:

“There are Several statutes passed in an endeavor to secure prompt payments by State and County of-

ficials of collections made by them, viz: Chapters 6205, 6928 and 7268, each one of which, except the first, contains the repealing clause, but I take it that certain parts of each are not necessarily in conflict with the other, and, therefore, all are more or less the law at this time, but as they have a bearing upon my duties as Comptroller in the payment of commissions on certain collections, I would thank you to give me an opinion as to what the law is at this time in reference to the same."

Replying to your communication I beg to advise that the provisions of Chapter 7268, Laws of Florida, Acts of 1917 is the law with reference to the duty of all Sheriffs and Tax Collectors to pay promptly moneys collected by them. This law covers the same subject as Chapter 6928 and repeals the same. Chapter 6245, Laws of Florida, Acts of 1911, applies to every State and County officer within the State and is in effect as to all officers except those mentioned in Chapter 7268 above mentioned.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

VOUCHERS—APPROVAL OF CERTAIN BY COMMISSIONER OF AGRICULTURE AND STATE CHEMIST.

Tallahassee, Fla., October 13, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 3d instant, to which is attached letter from Hon. R. E. Rose, State Chemist, in

which you ask for my opinion as to whether or not the approval of the State Chemist is required to be placed upon bills, referred to in an advisory opinion from this office of date December 7, 1917, citing in connection with the said opinion another opinion of date of August 1, 1919.

The opinion of August 1, 1919, which itself states is not in conflict with the earlier opinion, was rendered in response to a request of the Commissioner of Agriculture by his communication of July 8, 1919, as to "whether or not the Comptroller is authorized to pay detailed vouchers for expenses of Food, Drug and Fertilizer Inspectors of the Department of Agriculture upon the approval of the Commissioner of Agriculture only."

My conclusions were based upon a specific provision of the statute and was in reply to a specific inquiry as to the authority of the Comptroller. I adhere to that opinion still. It should be observed, however, that there was no question as to the advisability or expediency as to which the former opinion related. I also adhere to the early opinion, but since your communication expresses the need of a settled and specific construction clearing up what may apparently be a conflict, I beg to submit the following as my views in the matter:

In so far as the authority of the Comptroller is concerned, the statute names but one prerequisite to his favorable action upon a bill such as is involved and that is the approval of the Commissioner of Agriculture. In view of the facts, however, that the bills thus paid are paid from an appropriation which is chargeable and charged, as I understand it, against the appropriations for which the State Chemist is required to render an accounting, and for which the Commissioner of Agriculture is not required to account, I think, as stated in the earlier opinion, that these bills should be approved by the State Chemist, though I do not wish to be understood as expressing the view that the Comptroller may lawfully re-

fuse payment of a bill which has received approval of the Commissioner of Agriculture only.

I return herewith communication of the State Chemist to you.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

LAWS—CONSTITUTIONALITY OF CERTAIN.

Tallahassee, Fla., October 13, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to yours of the 10th instant, asking for my opinion as to the constitutionality of Chapter 7406, I beg to advise that in my opinion the same is constitutional, and that the items first mentioned therein are proper items to be included in the definition of costs which the Legislature has power to impose in the way of a penalty.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

ROADS AND BRIDGES—LEVY OF TAXES FOR.

Tallahassee, Fla., September 17, 1919. •

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

In reply to your oral request asking my opinion as to the right of the Board of County Commissioners of Clay County to levy the Special Road and Bridge Tax in the Walkill Special Road and Bridge District for the year 1919, the said District having been created subsequent to January 1, 1919, but prior to the date fixed by law for the levy of General Taxes, I beg to advise that Section 884n, of the Compiled Laws of Florida, 1914, provides as follows:

“That all Special Road and Bridge Taxes shall be assessed, equalized and collected upon the taxable property within the Special Road and Bridge District, by the same officers and in the same manner as is provided by law for the assessment, equalization and collection of other county taxes. * * *”

From this provision of law it is my opinion that the Board of County Commissioners above mentioned should levy the Special Road and Bridge Tax within said Special Road and Bridge District for the year 1919.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

LAWS—APPROPRIATIONS.

Tallahassee, Fla., October 14, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your communication of the 13th instant. requesting my opinion as to whether or not Sections 63 and 64 of Chapter 5596 and Section 1 of Chapter 6912 may be considered as appropriations, I beg to say that in view of the fact that the section last named has been construed as an appropriation; that the language of all the acts is substantially the same and in the further view that the payment of commissions provided for in the two sections first above named is contingent upon their being earned, it is my opinion that Sections 63 and 64 of Chapter 5596 are appropriations of equal force as Section 1 of Chapter 6912.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

LICENSES—RAILROAD NOT LIABLE FOR LI-
CENSE ON ITS PRIVATE TELEGRAPH LINES.

Tallahassee, Fla., October 16, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 8th instant, as follows:

"The following is a copy of a letter this day received from Hon. J. B. Jones, Tax Agent, Louisville & Nashville Railroad, of Montgomery, Alabama, stating that the Railroad Company-refuses to pay license taxes upon its telegraph lines:

'Referring to your letter of September 18th, requesting payment of \$149.04 license tax for 'Louisville & Nashville Railroad Telegraph Company,' I beg to advise you that the L. & N. Railroad Company owns certain poles and wires along its line of railroad in Florida, as shown in the return for taxation for the year 1919, which are used exclusively for the purposes incidental to the conduct of railroad business over its line of railroad. No commercial telegraph or telephone business is transacted over the said lines, but they are used by the Railroad Administration in the dispatching and operation of trains and for the transmission of messages applying to the common carrier business of the railroad. Since the termination of the contract between the Western Union Telegraph Company and the Louisville & Nashville Railroad Co., the railroad has had to supply its needs for wire service by acquiring these facilities which are used for purposes purely incidental to its common carrier business.

'Under these facts, I am advised by our Law Department that the license tax upon telegraph and telephone systems provided for under Section 54 of Chapter 6421, Laws of Florida, is not applicable to the wire lines of the L. & N. R. R. Co. in Florida, as now used.

'The railroad license tax, as I am advised, under Section 43 of Chapter 6421, which the statute provides shall be in lieu of all state and county license taxes on railroad companies, covers all business necessarily incidental to the operation of the railroad."

"I shall thank you to advise this office if there is any means whereby collection can be made of these taxes so

that I may proceed to do so if you deem it advisable to try to collect it."

Replying to your inquiry I beg to advise that under the decision in the case of Texas Company v. Amos, reported in 81 Southern at page 741, it is my opinion that if not commercial, telegraph or telephone business is transacted over the wire lines of the L. & N. Railroad Company, and such lines are used exclusively for purposes incidental to the conduct of railroad business over its line of railroad, that it would not be subject to the license tax provided for under Section 54 of Chapter 6421, Laws of Florida.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE PRISON FARM—EFFECT OF CHAPTER
7833 UPON APPROPRIATION.

Tallahassee, Fla., October 15, 1919.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of even date, asking for my opinion as to whether or not Chapter 7833, Acts of 1919, will have the effect of shutting off a resort for the support of the State Prison Farm and system to the General Revenue Fund at the end of this year.

Replying I beg to advise that it is my opinion that when the new convict system as prescribed by Chapter 7833 becomes operative that the Board of State Institu-

tions will not be authorized to resort to the General Revenue Fund as was done under Chapter 7324, Acts of 1917.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

INSURANCE—STATE PROPERTY—WHAT FUND
 PREMIUMS PAID FROM.

Tallahassee, Fla., November 12, 1919.

*Hon. Ernest Amos,
 Comptroller,
 Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 25th ult., in reference to insurance of State property and note that you desire my opinion as to what fund premiums for insurance are chargeable against with respect to the different properties, where no specific appropriation is made therefor and no maintenance fund provided.

I do not think that Chapter 5116 of the Acts of 1903 can be considered a continuing appropriation available at this time in view of the Act of 1917, which seems to be an absolutely new plan of insuring State property, and in further view of the amendatory Act of 1919.

The failure of the Legislature to make specific appropriations for insurance was evidently due to the fact that the necessity therefor due to the change of plan was overlooked.

In cases where a budget was made up by the last Legislature for certain institutions and an item for main-

tenance was named, I think the insurance should be paid therefrom; in cases where there is no insurance item, nor a maintenance fund, I know of no fund against which the charge could be made, unless it be from the contingent or incidental funds of the State or the several departments.

Very respectfully,

VAN C. SWEARINGEN,
Attorney General.

FLORIDA PURCHASE CENTENNIAL COMMISSION.

Tallahassee, Fla., November 17, 1919.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your communication of the 10th inst., transmitting therewith communication from Mr. W. G. Brorein, of Tampa, Fla., Chairman of the Florida Purchase Centennial Commission, together with a copy of resolution adopted by said Commission, and note that you desire my opinion upon the question involved.

Mr. Brorein's letter and the resolution adopted by the Commission reads as follows:

"I am herewith enclosing copy of a resolution adopted by the Florida Purchase Centennial Commission at its recent meeting in Jacksonville. While the members of the Commission had opinions from attorneys of high standing, informally rendered, that the plan of celebrating the Centennial Purchase proposed was in harmony with the provisions of the Act creating the Commission, I was directed by members of the Commission to submit

this matter to you for your opinion as to whether expenses incurred in the further discharge of the duties of the Commission in connection with the Centennial Celebration, could properly be paid out of the funds appropriated to cover expenses of the Commission.

The Commissioners will appreciate an expression of your views with reference to this matter at your convenience."

Signed W. G. BROREIN.

"Whereas, after full and careful investigation of the matter of holding an international exposition, celebrating the Florida Purchase Centennial, in all its phases, at some one point, it is the sense of this Commission that under present general and financial conditions it is not advisable for any one city to expend the vast amount of money, labor and materials necessary to construct, maintain and operate such an international exposition of such magnitude as will reflect credit to the State and nation, such international exposition being estimated to cost \$5,000,000 to \$10,000,000, whereof,

"BE IT RESOLVED, That it is the sense of the Commission that the entire State will be served by the holding of a Centennial Exposition in Pensacola, Jacksonville, Tampa and Miami, such exposition to be of an international character, under the direction and supervision of the Florida Purchase Centennial Commission, as provided in the Act creating said Commission.

"BE IT FURTHER RESOLVED, That this Commission proceed to do any and everything necessary to construct, inaugurate, operate and bring to a successful conclusion such International Exposition in accordance with said Act.

"BE IT FURTHER RESOLVED, That said Exposition be officially dedicated in Pensacola, Jacksonville, Tampa and Miami in the order named."

Replying to your communication, I beg to advise that the Florida Purchase Centennial Commission's powers and duties are defined by Chapter 7921, Laws of Florida, Acts of 1919, the title to which reads as follows:

"An ACT Creating the Florida Purchase Centennial Commission, Defining Its Powers and Duties, and Providing for the Necessary Expenses of Said Commission."

Section 5 of this Act provides as follows:

"Sec. 5. That said Commission is hereby vested with full and complete power to undertake, inaugurate, create, perfect, complete, supervise, manage, control, regulate and direct an International Exposition, which is hereby authorized to be held in the State of Florida dedicated on July 16th, 1921, and inaugurated on Victory Day, November 11th, 1922, in commemoration of the Florida Purchase Centennial, at such point in the State of Florida as said Commission may select."

It will be observed from a reading of the above quoted section of law that the Legislature evidently intended the holding of "An International Exposition * * * at such point in the State of Florida as said Commission may select." That the language employed in this law is clear and direct to the point that only *one* International Exposition should be held and at only *one* point in the State, therefore, I am of the opinion that the action of the Commission in designating four different points in the State where International Expositions may be held was not in harmony with the act creating it nor authorized under the law, and that such action was ultra vires.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

BANKS—CAPITAL STOCK INCREASES—CHANGE
OF NAME.

Tallahassee, Fla., February 21, 1920.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of your communication of the 18th inst., accompanied by a copy of a letter from you to the Cashier of the Citizens-American Bank and Trust Co., formerly the Citizens Bank & Trust Co., of Tampa, Fla., of January 13th last, and his reply thereto of the 7th inst., and note that you desire my opinion:

1. As to the course necessary for the Citizens-American Bank and Trust Co., formerly the Citizens Bank & Trust Co., to pursue in order to make the increase of the capital stock of the Bank to One Million (\$1,000,000.00) Dollars stand, and to fully authorize said company under the general law to conduct a banking business; and,

2 As to what the present status of the Citizens-American Bank and Trust Co. of Tampa is,—the name of the company having been changed by compliance with the general incorporation laws of Florida, and in view of the fact that the Citizens-American Bank and Trust Co. has omitted to transfer under Section 2727 of the General Statutes.

Chapter 6155, Acts of 1895, constituted certain individuals a body corporate under the name of The Citizens Bank & Trust Co., hereinafter referred to as the original corporation.

Among the powers contained in this charter act,—and none other than those therein contained were conferred,—was one to increase the capital stock to any sum

not in excess of Five Hundred Thousand (\$500,000) Dollars.

Unquestionably, so long as the original corporation chose to operate under this special charter with a capital stock not in excess of Five Hundred Thousand (\$500,000) Dollars, and the increase to that amount was attained agreeable to the act, no other acts were required of it, such as are required of such institutions incorporated under the general laws; but when and if the original corporation undertook to operate upon a basis or to exercise powers, either or both, not included in this special charter, it placed itself in the same position as other like institutions organized under the law as it existed at the time the new powers were sought to be exercised.

Section 2727 provides for what is, in effect, a transfer of institutions of this character from the operations of their special charters to those granted under the general incorporations laws, but this transfer is not authorized to another name but only in the same name. Hence, this original corporation may, under the law just cited, amend its original charter in all respects save as to the name so as to come under the general law; but when it does so it becomes subject to all the liabilities of like institutions incorporated under the general law.

I do not think that this original corporation can legally be permitted to reap the benefits of a capital stock in excess of Five Hundred Thousand (\$500,000) Dollars and at the same time enjoy the immunities, if any, derived from the original charter. To do so would be to permit the use of so much of the original charter as conferred advantages and the rejection of its burdensome or hampering provisions.

If, as the correspondence before me indicates, the original corporation has been absorbed by the new concern, then the original charter is in effect abandoned and the absorbing concern would, of course, not be permitted to

operate under the original charter of 1895, but would be subject to the general incorporation laws. In fact, it seems plain to me, no institution of any other name has or would have the right to this special charter since Section 2727 only authorizes a transfer under the same name.

Answering the first inquiry specifically, I would say that in order for the original corporation to continue to enjoy the benefits of an increased capitalization a strict compliance with Section 2727 is necessary, in which event, it automatically becomes subject to the laws governing like institutions organized under the general laws.

As to the second inquiry, I would say that The Citizens-American Bank and Trust Co., partakes of none of the benefits of the Act of 1895, by virtue of its successorship to the original corporation, or otherwise; but if it has been organized under the general law it may, under proper circumstances, absorb the original corporation's assets and contractual liabilities, leaving it, the new concern, subject to all the liabilities imposed upon it by the general law and enjoying only the rights and privileges thereby conferred.

I assume that the new institution, The Citizens-American Bank and Trust Co., has been regularly organized under the general laws. If it has not, of course, it has no legal status as a corporation because, as before stated, there is no existing law by which the original corporation may be merged into another of a different name.

I return the correspondence herewith.

Very respectfully,

VAN C. SWEARINGEN,

Attorney General.

STREET RAILWAYS—AUTHORITY OF MUNICIPAL-
ITY TO OWN SUBJECT TO TAXATION.

Tallahassee, Fla., March 17, 1920.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:

I beg to acknowledge receipt of yours of the 10th inst., stating that it is represented to your department that the City of St. Petersburg has acquired title to the St. Petersburg & Gulf Railway, operating the street railway in that City; that contention will be made by the City that this property is exempt from taxation in this State because title to the same is vested in the City, and asking for my opinion as to whether or not property of this class is exempt from taxation under the laws of this State.

In reply to your communication, I beg to say that the question depends upon whether or not the City of St. Petersburg is empowered to acquire the property named.

In my opinion, cities and towns in this State are not empowered to own and operate street railways—certainly not without specific statutory authority—and I have been unable to find any such specific statutory authority.

The City of St. Petersburg was the first City in the State to adopt a charter under Chapter 6940, Acts of 1915, commonly known as the Home Rule Act for municipalities. In that charter, which appears regularly adopted, there was a provision to the effect that the City should have the right to take over by purchase any property owned and used under any franchise granted by the City. The Legislature of 1917 amended this particular provision in some respects, and particularly exempted therefrom interurban street railways.

Whether there is some other provision of law under which the City may exercise the right to acquire and operate this property I am unable to say, except that I find none after a more or less exhaustive research.

In view of the foregoing, I am constrained to the view that the property mentioned, not being such as the City is authorized to acquire and operate, is subject to taxation.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

APPROPRIATIONS—CONSTRUCTION OF LAWS
MAKING.

Tallahassee, Fla., March 23, 1920.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 20th instant, asking for my opinion as to whether or not the unexpended balances of the appropriations of 1917, as made by Chapter 7279, in the State Treasury at the time of the taking effect of the subsequent biennial appropriations for the same general purposes, Chapter 7797, Acts of 1919, lapsed or reverted and are available to the institutions named at this time, or since May 23, 1919, the time of the taking effect of the latter Act.

I note that you refer to Chapter 7799 as being for purposes similar to those named in Chapter 7279, but assume

that this is due to a clerical error, as Chapter 7799 makes appropriations for other institutions.

Replying to your communication, I beg to advise that upon an examination and comparison of the various and sundry acts making appropriations, particularly in view of the fact that the Legislature at each session after the passage in 1905 of the Act known as the Buckman Bill—Chapter 5384—which consolidated all the institutions of higher education, up to and including 1913, made special provision that previous appropriations should be continued and not affected by the new appropriations; that the Legislature of 1915 omitted such provision, which action was followed by like omission in 1917, and applying the general rule that a subsequent act covering the scope of a former one is an implied repeal of the former, I am of the opinion that all unexpended balances of the funds appropriated by Chapter 7279, Acts of 1917, remaining in the State Treasury on May 23, 1919, when Chapter 7797 took effect, reverted, and have not since the latter date been available to the institutions named in the act, except, of course, as to obligations incurred prior to said date which would be a charge against such unexpended balances.

Yours very truly,

CC—Hon. Bryan Mack,

Secretary Board of Control,

For his information.

VAN C. SWEARINGEN,

Attorney General.

ROADS AND BRIDGES—COMPENSATION OF TRUSTEES OF SPECIAL TAX DISTRICT.

Tallahassee, Fla., May 5, 1920.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of yours of the 19th ult., in which you ask me to advise your office as to what compensation is authorized to be paid trustees of the special road and bridge districts in this State, and from what fund the same should be paid.

Replying thereto I beg to say that Section 804 of the General Statutes fixes the basis for the fees of trustees of "County bonds." This statute provides that the fees of such trustees shall be based upon the fees which may be allowed county treasurers. While there may be some doubt as to whether such trustees are now entitled to any compensation, there being no such office as county treasurer, it is not necessary at this time to decide the point. However, if trustees of special road and bridge districts are entitled to the same compensation as trustees of "County bonds," there is no provision that I have been able to find on the laws governing special road and bridge districts providing from what fund the same shall be paid or how much such trustees shall receive.

Such being the case, it is my opinion that there is no authority for the payment of the trustees of special road and bridge districts in this State and, of course, no fund provided from which the same should be paid.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STREET RAILWAYS—MUNICIPALITIES NOT AUTHORIZED TO OPERATE.

Tallahassee, Fla., May 29, 1920.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

In further connection with the question as to whether or not the property of the Interurban Street Railway System, now owned by the City of St. Petersburg, is subject to taxation.

Without undertaking to determine the constitutional validity of the charter provisions of the City of St. Petersburg, granting authority to acquire, construct, maintain and operate, within or without its corporate limits, transportation systems, as pointed out in the letter of the Director of Finance of said City, dated May 18, 1920, of which validity I entertain serious doubts, the question remains as to whether or not the property is held and used exclusively for municipal purposes as contemplated by Section 16 of Article 16 of the Constitution.

Section 1 of Article 9 of the Constitution authorizes the Legislature to exempt property used for municipal purposes.

Section 431 of the General Statutes exempts all public property of cities used or intended for public purposes.

Assuming, but not deciding, that the terms "municipal purposes" and "public purposes" are interchangeable and mean the same thing, and adopting the recognized definition of "public purposes" as laid down by the Lexicographers—and I consider the term "municipal purposes" of a more restrictive meaning—it would seem that the owning

and operating of an interurban street car line is not a municipal purpose, or public purpose as contemplated by the Constitution and laws.

It is also important to consider that Chapter 6940 contains a provision that the Act shall not be so construed as to authorize any City or Town to enlarge its corporate powers beyond the limitations prescribed by law. Unless, therefore, authority can be found in the law elsewhere than in the charter which derives its vitality from the Home Rule Act, and unless the power existed generally in municipal corporations prior to the passage of the Home Rule Act, to engage in enterprises of the sort here involved, it would seem that the authority is lacking.

The authorities are not in accord on the proposition, and it is said that each case must stand on its own bottom, the determination in each instance, as to whether the enterprise engaged in or the property held is for public or municipal purposes, being for the courts. In my opinion, however, the property in this case is subject to taxation as not coming under any of the exemptions allowed by law.

I return the correspondence herewith, consisting of my letter to you of March 17, and the letter to you from the Director of Finance of the City of St. Petersburg, dated May 18, 1920.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

BANKS—NATIONAL BANKS CONDUCTING TRUST
BUSINESS.

Tallahassee, Fla., June 14, 1920.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir: —

I am in receipt of your letter of the 7th inst., transmitting letter from Mr. J. R. Anthony, Vice-President of the Bankers' Financing Company, Jacksonville, Fla., with certain correspondence thereto attached, and note that you desire my opinion as to whether or not it is possible for a National Bank to conduct the business of a trust company in the State of Florida without action by the Legislature providing how and in what manner and to what extent these powers would be exercised and how the necessary deposits required to be made by trust companies incorporated under the laws of Florida can be made with the State Treasurer for the protection of the widows and orphans and others, which appear to be the leading feature of the Florida Trust Laws.

Replying to your communication, I beg to advise that the law of this State authorizing the incorporation of trust companies and providing for the powers and prescribing the duties of such companies is in nowise connected with the law providing for the organization and carrying on of a banking business except that a corporation may be organized to conduct both banking and the trust business by complying with the law relating to both.

As the law is today, it is my opinion that there is no way by which a National Bank can comply with the trust laws with reference to the provisions thereof relat

ing to making the necessary deposit with the State Treasurer.

With reference to the law of Georgia mentioned in your letter as compared with the law of this State, it will be noted that in the State of Georgia there is a statute specifically providing for the doing of a trust business by national banks.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

APPROPRIATIONS—STATE GEOLOGICAL
SURVEY.

Tallahassee, Fla., June 21, 1920.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 18th inst., as follows:

“An appropriation of \$7,500.00 is annually made under Chapter 5681, Acts of 1907, providing for the salary and expenses of a Geological Survey of this State, \$2,500 thereof going towards paying the salary of the Geologist and \$5,000.00 thereof towards defraying expenses.

“The question has arisen as to whether any unexpended balances existing to the credit of such appropriation at the end of each year should be carried forward so that it might be used for the purposes stated in the Act in the next or succeeding

years, and I would thank you to give me your opinion as to your construction of this Statute in this regard, and very much oblige."

Replying to your inquiry, I beg to advise that under the provisions of Section 5 of Chapter 5681 above mentioned it is provided that for the purpose of expeditiously and thoroughly carrying out the provisions of the Act there shall be appropriated the sum of \$7,500.00 per annum. In the latter part of this Section it provides that \$2,500.00 shall be expended per annum for the salary of the State Geologist, and, second, that so much of the \$5,000.00 balance of the appropriation shall be expended for contingent expenses of the survey including compensation of all temporary and permanent assistants; traveling expenses of the Geological corps; purchase of materials or other necessary expenses for outfit; expenses incurred in providing for the transportation, arrangement and proper exhibition of the Geological and other collections made under the provisions of the Act; for postage, stationery and printing, and the printing and engraving of maps and sections to illustrate the annual report.

By limiting the use of the \$5,000.00 of the appropriation for the purposes above enumerated, or so much thereof as may be necessary, would, in my opinion, limit the appropriation so that in the event of any unexpended balance of this \$5,000.00 it would revert to the treasury just as if no appropriation other than the amount actually expended was made.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

APPROPRIATIONS—WHEN FUNDS REVERT TO
THE TREASURY.

Tallahassee, Fla., August 12, 1920.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 7th instant, asking for my opinion as to whether or not the provisions of Chapter 7277, the General Appropriation Act of 1917, to the effect that any unused portion of the appropriations there made should be carried forward and made available for the succeeding year or years, are available for the period covered by the 1919 Appropriation Act, and, if so, whose is the duty of directing as to which fund, as between the 1917 and the 1919 appropriation, shall be drawn upon.

In reply, I beg to advise that it is my opinion that without such a provision as is contained in the 1917 Act all unexpended balances remaining in any fund at the end of any of the three periods covered thereby, to-wit: The six months beginning July 1, 1917, the year 1918, and the first six months of 1919, would revert to the Treasury; but that the provision mentioned using the language "succeeding year or years" had the effect of rendering available all unexpended balances remaining at the end of any of the three periods in any succeeding year or years; or, other words, until expended.

If the language "succeeding year or years" were held to apply only to the periods making up the two years ending June 30, 1919, then the Act would have the effect of nullifying itself in the event there should be a balance remaining at the end of the last of the three periods covered thereby, viz.: The first six months of 1919. Further, since

the 1919 Act provides for the reversion to the Treasury of all unexpended balances remaining at the end of the period for which they were appropriated, which would be the case without such a provision, I am of the view that in order to give effect to the 1917 Act, and to render available moneys intended by the Legislature to be appropriated by the 1919 Act, all payments should be made from the 1919 appropriations so long as there are funds from that source in hand, and then from the balance unexpended from the 1917 appropriation. To exhaust the unexpended 1917 appropriation before resorting to the 1919 appropriation would, I think, be a substitution of the one for the other contrary to what seems to have been the meaning of the 1917 Legislature whose appropriations, with unexpended balances in some instances at least, were, it is reasonable to assume, in the minds of the 1919 Legislature.

Pursuing the course outlined, there should be, it seems, little, if any, necessity for a designation by any department of the particular fund to be drawn upon, but your Department would simply charge against the 1919 appropriations and the 1917 unexpended balances in the order named. In the event that any part of the 1919 appropriation should revert, the unexpended balances of the 1917 appropriation would, if any remained, go over and be available until expended.

I think the title to the 1917 Act is sufficiently broad to cover the provision in question under the decisions of our Supreme Court.

CC—State Chemist,

With the return of his file.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

STATE ATTORNEYS—COMPENSATION WHEN
ACTING IN ANOTHER CIRCUIT.

Tallahassee, Fla., December 17, 1920.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of even date with exhibits with reference to the claim of Hon. Joseph H. Jones, State Attorney for the Seventeenth Judicial Circuit, who, by order of the Governor, was transferred to the Fifteenth Judicial Circuit.

In reply I beg to advise that, in my opinion, the statutes cited by Mr. Jones as authority for the allowance of his claim apply only to cases in which a member of the bar, not a State Attorney, is appointed by the Presiding Judge as "Acting State Attorney."

The transfer or exchange of State Attorneys by the Governor is provided for by the Act of 1905, Chapter 5399 (1781b, Compiled Statutes). Section 4 of Chapter 5399 (1781d, Compiled Laws) specifically provides that the Act shall not affect the power of the Circuit Judges to appoint acting or Assistant State Attorneys, "and providing for their payment out of the salary of the State Attorney for whom they are acting, or who they are assisting."

My conclusion is that State Attorneys assigned by the Governor to another Circuit under the statute cited are not entitled to be paid under Section 1790, but are only entitled to their expenses for which an appropriation is made. See Chapter 7783, Acts of 1919, in which there is

an appropriation of Three Hundred Dollars for "expenses of State Attorneys acting in other Circuits" for the year 1920.

I return papers herewith.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

OFFICERS—COUNTY OFFICERS' COMPENSATION.

Tallahassee, Fla. November 24, 1920.

*Hon. Ernest Amos,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

In response to your request for a construction of Chapter 7334, Acts of 1917, I beg to say that in my opinion the salaries of deputies and assistants, the number and compensation of which are fixed by the County Commissioners, should be paid by the officials out of the gross receipts of his office, and that from the remainder, which would be the net receipts, his own fees should be calculated and deducted according to the second paragraph of Section 1 of the Act mentioned.

Just what should be done with whatever might be left after the payment of the official and his deputies seems not to be provided for, but it was probably the intention of the Legislature that such excess be paid into the treasury, though how often and at what periods we are left in the dark. It is clear to me, however, that without a clearer Legislative expression the County Commissioners would not be authorized to pay any deputies or as-

sistants, their sole duty being to fix the number and amount of compensation.

The statute would easily bear amendments more clearly defining the term "net income" as there used, and also providing for the disposition of the excess.

It should be understood that the Act does not in anywise alter or affect the amount and manner of payment of fees, commissions or other remuneration allowed or fixed pursuant to law, and that while there is no direction as to a disposition of the excess over and above the officers' remuneration, such excess should in all instances be held and treated as a trust fund to be administered as the Legislature may in future direct.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

INSURANCE COMPANIES—FOREIGN—MUST COM-
PLY WITH CORPORATION LAW AS TO OBTAIN-
ING PERMIT FROM SECRETARY OF STATE.

Tallahassee, Fla., March 6, 1919.

Hon. J. C. Luning,
State Treasurer,
Tallahassee, Fla.

Dear Sir:—

Your communication of the 28th ult., requesting an official opinion received, as follows:

"Chapter 5717, Laws of Florida, provides that no foreign corporation shall transact business until it shall file in the office of the Secretary of State a duly authenticated copy of its charter or articles of in-

corporation, and shall have received from him a permit to transact business in this State. The law further provides that the Secretary of State shall not issue the permit until he shall have received a sum equal to that which the corporation would have been required to pay as a charter fee, if it had been incorporated in this State.

"We frequently have application for license to do business in this State from mutual insurance companies. These corporations are corporations not for profit, but are for the purpose of issuing insurance to its policyholders and any excess in the amount of premium collected is returned to the policy-holder as dividend. Each policy-holder has a vote in the management of the company.

"Please advise me if it is necessary for such corporations to file a copy of their charter or articles of incorporation with the Secretary of State, and if so what fee should they pay."

Replying will state that Chapter 6854, Laws of 1915, provides "any foreign insurance company, or association of any class whatever doing business in this State without a license so to do shall be subject to a fine of \$500 for each offense," etc. It is also observed that Section 5 of Chapter 5717 provides that said Chapter shall apply to foreign insurance companies and all other foreign corporations which now are or may hereafter be required to obtain their certificates of authority to transact business in this State, except those which are excepted by its terms from the operation of the Act.

It is observed that mutual insurance companies are not excepted from the operation of the above Act, and all insurance companies must obtain licenses to do business in this State, and must comply with Chapter 5717 by procuring a permit from the Secretary of State; which law provides for a charter fee of \$2.00 per thousand for each thousand dollars of capital stock until the maximum fee

of \$250.00 is reached; also a fee of \$5.00 to the Secretary of State for issuing the permit.

Inasmuch as the mutual insurance companies referred to are corporations not for profit and have no capital stock, it is my opinion that such companies should be admitted and a certificate issued by the Secretary of State when such companies shall have filed their articles of incorporation, and paid \$5.00, the minimum fee, to the Secretary of State.

Respectfully submitted,

VAN C. SWEARINGEN.

Attorney General.

INSURANCE LOAN ON POLICY.

Tallahassee, Fla., October 17, 1919

*Hon. J. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 15th instant asking me for an opinion as to whether or not an insurance company may cancel its paid-up policy of insurance for non-payment of the interest upon a loan thereon.

As I understand the facts from your communication and examination of the correspondence attached thereto, it is my opinion that if at the time the loan was made the policy was in fact a "paid-up" policy in the sense that all premiums had been fully paid thereon and that the policy was deposited with the company purely as collateral security for the loan the company could not legally cancel it.

However, if the company made the loan upon this policy as a "paid-up" policy and the loan contract was in the nature of an assignment of the rights of the insured and the beneficiary therein, which was to become absolute as a conveyance upon the happening of a certain contingency, such as for instance the non-payment of the interest, and that contingency did happen, then the policy would become the property of the company and it could cancel same. The distinction being that in the former case the policy would have been held as collateral security for the repayment of a loan—a pledge in fact—while in the latter case it would have been a conveyance to become absolute upon the happening of a contingency.

The rights of the company in this case depend altogether upon the terms and conditions of the loan. The principle is aptly stated in the sixth headnote to the case of Travelers Insurance Company v. Lazenby, 80 So. 25, which is as follows:

"An Insurance Company, which loans money on its own paid-up policy as security, is in the same position as other loaners, or as loaners on other security, and cannot cancel the insurance or avoid the policy, *in the absence of acquisition of title thereto*, except by proceedings necessary in the case of other loaners." (The underscoring is the writer's.)

I return all papers herewith.

Yours very truly,

VAN C. SWEARINGEN.

Attorney General.

INSURANCE—LOAN ON POLICY.

Tallahassee, Fla., October 31, 1919.

*Hon. J. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

Replying to your communication of the 20th instant in further regard to the matter of the claim of Mrs. Guill against Metropolitan Life Insurance Company, of New York, in which I rendered an opinion on the 17th instant under a misapprehension of the facts which has been corrected by your latest communication, I beg to advise that in view of the corrected information I am of the opinion that the loan obtained by the insured to which the beneficiary was party, the same having been negotiated before the policy in question became a paid-up policy, the rights of the insurer would still depend upon the terms and conditions of the loan, but that the principles laid down in the Alabama case cited in my communication of the 17th instant would not be applicable necessarily.

However, as stated, the whole matter depends upon the terms and conditions of the loan, but as a matter of common knowledge such loans are usually made with the condition that in default of their repayment or the interest thereon all rights under such policies shall be forfeited. Such contracts, so far as I know, are valid and have been upheld in the courts wherever tested.

I am returning herewith the correspondence.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE FUNDS—METHOD OF DEPOSITING IN
BANKS.

Tallahassee, Fla., January 30, 1920.

*Hon. J. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of your communication of the 29th instant, quoting Chapter 7929, Acts of 1919, and asking for my opinion as to "Whether or not, under the provisions of the law quoted above, the Governor, Comptroller and State Treasurer would be required to deposit all the State Funds, derived from taxation from the various counties of the State, in only one, two or three banks of the State in case said banks should bid the highest percentage of interest for said funds, and should furnish security required by law and satisfactory to said officials." And also "If certain banks should be the highest bidders for only a portion of said funds and the other bidding banks bid the same rate for the remainder of the funds, if in such case the law requires said officials to deposit the remainder of such funds pro rata among banks, in the counties from which the remainder of such funds was received."

In reply, I beg to advise that, in my opinion, it would be the duty of the officials named to designate as depositories of all the State's moneys derived from taxation the bank or banks offering the best inducements as to interest and securities. In other words, if the proposal of one bank should be for all the moneys available for deposit and upon terms better than that of any other that such bank should be designated as such depository. If there be more than one such proposal then the deposits

should be equally distributed among them. If, on the other hand, one or more banks should be the best bidders for only a portion of the moneys, while such portion should be deposited in such bank or banks, the remainder of the moneys available for deposit should be deposited in the bank or banks offering the best inducement for such remainder, and in the event all such inducements are equal, such deposits should be distributed as provided by the statute named, i. e., to the banks of the several counties pro rata according to the proportion of State taxes paid by such counties.

The language of the statute is, in my opinion, capable of no other interpretation than that upon deposit of the State's moneys the State should receive the maximum return, and that it is upon that basis that the depositories should be designated.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

BOND ISSUE—JACKSON COUNTY SPECIAL TAX
SCHOOL DISTRICT NO. 1.

Tallahassee, Fla., March 16, 1920.

*Hon. J. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:—

In reference to the transcript of record of the twenty thousand dollar bond issue of Special Tax School District No. 1, Jackson County, which you transmitted to this office for examination by me, I beg to advise that

before this office can pass favorably upon this bond issue it will be necessary for it to be made to appear that a valid district existed; i. e., that the district proposed to issue the bonds was created as required by law. The transcript which you delivered to me for examination fails to do this.

Special Tax School Districts are created, as you know, upon petition of one-fourth of the qualified electors who pay a tax on real or personal property residing within the territory forming the district. When this petition is filed, and after the Board has ascertained that it is in order and signed by the requisite number of qualified petitioners, it should be published once a week for four successive weeks in some newspaper published in the county and having a general circulation throughout the county (Section 401, General Statutes, 1906). Your transcript should show by affidavit that this petition was duly published.

When publication of this petition has been duly made as required by this State, and proof of the publication filed, the Board, if it considers the petition favorably, should pass a resolution reciting the fact and calling the election. Notice of this election is required to be given by publication once a week for four consecutive weeks prior thereto in a newspaper published in the county and having a general circulation throughout the county (Section 402, General Statutes, 1906). Then proof of publication of this notice should also be made and filed with the Board. The Board also is required to select inspectors and clerk for such election and the returns made by the inspectors are filed with the Board and canvassed by it.

The same proceedings, both as to the creation and change of boundaries of the district, if any, in question, should be set out and proven as above.

The petition, resolution and notice of publication, proof of publication of the petition, proof of publication

of the notice of election, returns of inspectors and clerk, result of canvass and publication of result of the election by the Board, should be made a part of the minutes of the Board, both as to the creation and change of the boundaries, if any, of the district. It is very essential that the petition should be recorded in both instances, because no action can be taken except upon the petition filed as required by the statute, and the boundaries of the district proposed to be created are required to be set out in the petition.

Before passing upon this matter it will be necessary that I have a certified copy of the minutes of the Board showing the action taken in these several matters.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

BOND ISSUE—CITY OF MARIANNA.

Tallahassee, Fla., July 15, 1920.

*Hon. J. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of yours of the 12th instant, transmitting papers in the case of the City of Marianna, a Municipal Corporation, v. The State of Florida, proceedings under Chapter 6868, Laws of Florida, to validate a certain bond issue of said Corporation, and note that you desire my opinion as to the legality of said issue.

In reply I beg to advise that the procedure prescribed by law appears to have been followed, and that the court obtained jurisdiction of the parties and the subject matter. Such being the case, by the terms of the statute, the order of validation becomes conclusive on all parties, and the validity of the bonds shall never be called in question in any court in this State, subject, however, to the right of the State to appeal, which right does not expire until six months after the date of the validating order. I am, therefore, of the opinion that the said bonds will constitute a valid and binding obligation upon the said municipality and will be unquestionable upon the expiration of the time within which an appeal may be taken.

I return all papers herewith.

Yours very truly,

VAN C. SWEARINGEN.

Attorney General.

BOND ISSUE—CITY OF MARIANNA.

Tallahassee, Fla., July 23, 1920.

*Hon. J. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 22nd instant, transmitting certain papers in connection with the bond issue of the City of Marianna, and the validation proceedings had in the court.

In reply thereto, I beg to advise that in my opinion these bonds constitute a binding obligation upon the City of Marianna—the order validating the same being con-

clusive upon the parties, unless an appeal is taken and pending within the time limit prescribed by the statute of 1911.

In view of the fact that these bonds were authorized more than five years ago and seem not to have been placed on the market for that period, I suggest that you satisfy yourself that there is and has been no question of the validity of the issue raised.

I return all papers herewith.

Yours very truly,

VAN C. SWEARINGEN.

Attorney General.

BOND ISSUE—CITY OF TALLAHASSEE.

Tallahassee, Fla., July 30, 1920.

*Hon. J. C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:—

I have examined the proceedings taken in the issuance by the City of Tallahassee, Fla., of certain bonds for the purposes and the amounts hereinbelow set out, to-wit:

1st. For the issue and sale of negotiable bonds of said city to the amount of one hundred and seventy-five thousand dollars par value, five thousand dollars thereof to mature each year for five years, beginning with the year 1926, six thousand dollars thereof to mature each year for the five years beginning with the year 1931, seven thousand dollars thereof to mature each year for five years beginning with the year 1936, eight thousand dollars thereof to mature each year for five years beginning with the year 1941, and nine thousand dollars thereof to ma-

ture each year for five years beginning with the year 1946, and to bear interest at the rate of five per cent. per annum, payable semi-annually, for the purpose of improving and extending the waterworks, electric light and gas plants of said city.

2nd. For the issue and sale of negotiable bonds of said city to the amount of ten thousand dollars par value, to run for twenty years from date, and to bear interest at the rate of five per cent. per annum, payable semi-annually, for the purpose of extending the sewerage system of said city.

3rd. For the issue and sale of negotiable bonds of said city to the amount of ten thousand dollars par value, to run for twenty years from date, and to bear interest at the rate of five per cent. per annum, payable semi-annually, for the purpose of paving College avenue.

4th. For the issue and sale of negotiable bonds of said city to the amount of six thousand dollars par value, to run for six years from date, and to bear interest at the rate of five per cent. per annum, payable semi-annually, for the purpose of funding a like amount of electric light bonds of said city which matured July 1, 1919.

5th. For the issue and sale of negotiable bonds of said city to the amount of eleven thousand dollars par value to run for fifteen years from date, and to bear interest at the rate of five per cent. per annum, payable semi-annually, for the purpose of funding a like amount of interest-bearing certificates of indebtedness of said city which are past due.

From my examination it appears that the proceedings taken in the issuance of said bonds were regular and authorized by law, and that they constitute a binding and legal obligation upon the City of Tallahassee.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

LICENSE—NO TAX ON MANUFACTURE OF
BROOMS AND AXE HANDLES.

Tallahassee, Fla., November 18. 1920.

*Hon. J. C. Luning,
Treasurer,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 17th inst., to which is attached a letter from Andrew Murphy to State Treasurer, dated November 15, 1920, and note that you desire my opinion upon the questions involved in Mr. Murphy's letter.

Replying to your communication, I beg to advise that there is no license tax on the manufacture of brooms or axe handles in this State, but there is a license tax on the manufacture of harness and saddlery. Mazze-collars would doubtless be classed as harness.

The fact that articles are manufactured without using machinery, would not in my opinion have anything to do with the question of a license tax.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SCHOOLS—PURCHASE OF SITE FOR SCHOOL
BUILDING.

Tallahassee, Fla., July 3, 1919.

*Hon. W. N. Sheats,
Superintendent of Public Instruction,
Tallahassee, Fla.*

Dear Sir:—

Replying to your verbal request for my opinion upon the questions submitted in a letter to you from Hon. W. O. Lemasters, County Superintendent, Brooksville, Florida, under date of June 26th, relative to the question of purchasing site for school building and the manner of securing funds for the purchase thereof, I beg to advise that I am transmitting to you herewith opinion of the Supreme Court in the case of Langford, et al., v. Board of Public Instruction of Lee County, which takes into consideration the provisions of Section 324 of the General Statutes of Florida mentioned by Mr. Lemasters, and by reading this opinion it will give the information he desires. I suggest therefore that you forward him this copy of the above mentioned opinion with the request that he return same to you when it has served his purpose.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SCHOOLS—GRANTING TEACHERS' CERTIFICATES.

Tallahassee, Fla., August 14, 1919.

*Hon. W. N. Sheats,
State Superintendent,
Tallahassee, Fla.*

Dar Sir:—

I am in receipt of yours of the 13th instant, asking for my opinion as to the authority of the Commission created by Section 17 of Chapter 7372, as amended by Chapter 7942, Laws of 1919, to issue certain certificates.

In my opinion the correct answer to both of your questions should be in the negative, because:

One of the prerequisites to the issuance of a certificate by the State Superintendent is that the applicant must have graduated prior to June 15, 1905. The applicable language of the governing statute is "Any regular graduate * * * having graduated * * * since June 15, 1905, * * * shall file an application in the form prescribed * * *, which form shall contain * * * a complete transcript of the applicant's college record, show the branches pursued and completed * * * with a certified copy of his or her diploma."

The diploma or certificate of graduation is nothing more or less than the written evidence of the fact that the holder has completed the course of study upon which the diploma or certificate is based. The material fact to be determined is whether or not the course of study of the branches pursued was completed within the time limit.

I gather from conversations with the members of the Commission that difficulty has arisen in the matter of the issuance of certificates in the cases of those who hold

college degrees conferred since June 15, 1905, but who, as a matter of fact, are regular graduates of schools or colleges, having completed such *regular* course prior to the date named. In such cases I am of the opinion that you would not be authorized to issue such a certificate. In other words, I think the time of the completion of the *regular* course, which is the basis of the application for a certificate, is the test and not the date of the written evidence of such completion.

I find further support for my conclusions in the matter in considering that it was the obvious intent of the Legislature that this class of certificates should be issued to those, and those only, who were, comparatively speaking, fresh from the study of those branches which they could, under the certificates issued by the State Superintendent, be permitted to teach in the public schools of Florida. This record, of course, becomes of lessened vitality as time removes us further from the date fixed by the statutes, but it was necessary to fix some date in order to accomplish the end desired.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

SCHOOLS—CONTRACT FOR TEXT BOOKS, ETC.

Tallahassee, Fla., September 6, 1919.

*Hon. W. N. Sheats,
State Superintendent,
Tallahassee, Fla.*

Dear Sir:—

I have before me letter of American Book Company, to which is attached a continuation certificate for their Elementary School Book Contract.

This certificate is sufficient, provided that their previous contract was for elementary school books. You will note that the certificate has reference to a bond executed November 12, 1917; this bond being for the faithful performance of a contract of that date. If that contract was for elementary school books, and the bond covered the same, the certificate is sufficient, otherwise mention should be made in the certificate to cover Elementary School Books Contract for this year.

I return the letter and certificate herewith for your action in accordance with the views above expressed.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

FERTILIZERS—APPLICATION FOR CERTIFICATE.

Tallahassee, Fla., March 11, 1919.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 10th instant, as follows:

“The Nitro Phospho Corporation of Ocala, Florida, through its President, Mr. M. W. Lloyd, has filed a request for registration of its produce, ‘Phos-pho-germ.’

“I hand you herewith the ‘Request for Registration,’ with a copy of analysis of these goods both by the State Chemist of Florida and Georgia, and also

a sworn statement of the analysis of nine bags of Phos-pho-germ, attached by State Inspector Marcus Endell, at Fort Pierce, on February 25th, 1919, and analyzed by the State Chemist and transmitted to this Department as Analysis, Official Sample No. 2558, on March 7th.

"In view of the requirements for registration, under our fertilizer law, and further in view of the data furnished herewith and asked to be a part of of this communication, shall I accept this Request for Registration, and if not, what is necessary to be done, if anything, that the matter may be properly adjudicated?"

Replying to your inquiry, I beg to advise that Section 1267 of the General Statutes of Florida (1906) provides as follows:

"Any manufacturer or importer of or agent for the sale of commercial fertilizers, previous to offering the same for sale in this State, shall file with the Commissioner of Agriculture annually a paper giving the name of his principal agent or agents in the State of Florida, also the name and guaranteed analysis, under oath, of the fertilizer or fertilizers offered for sale by him."

The application of the Nitro Phospho Corporation made under oath as to the guaranteed analysis of its product "Phos-pro-germ" is as follows:

"Available Phosphoric Acid 1/10 of 1%; Nitrogen, estimated as ammonia 1/10 of 1%; Potash (K_2O) soluble 1/10 of 1%; Insoluble Phosphoric Acid 1/10 of 1%; Moisture vaporizing at 212 Deg. Fht. 25%; Chlorine not 1%."

The analysis of this product as made by the State Chemist shows available Phosphoric Acid 65%; Ammonia 1.55%; Potash .19%; Insoluble Phosphoric Acid 13.05%; Moisture 16.45%.

The guaranteed analysis of fertilizers to be filed with the Commissioner of Agriculture is to be an analysis showing the actual percentage of Ammonia, Phosphoric Acid, Potash, etc., as near as possible.

It appears from a comparison of the analysis as filed with you by the Nitro Phospho Corporation of its product "Phos-pho-germ," and the analysis made by the State Chemist thereof, that there is a wide variance in the percentages of the various ingredients. Assuming the analysis as made by the State Chemist is correct, then the Guaranteed Analysis as filed with this application for registration is not such a one as is contemplated in Section 1267 of the General Statutes, for the reason that it does not represent the true value of the ingredients as required, and I think you would be authorized to refuse to register for sale in this State the above mentioned fertilizer under analysis as guaranteed by the Nitro Phospho Corporation in its application for registration, until such time as an application is filed with you showing a correct analysis of the ingredients thereof.

Respectfully submitted,

VAN C. SWEARINGEN,
Attorney General.

APPROPRIATIONS—STATE MARKETING BUREAU.

Tallahassee, Fla., March 18, 1919.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

Replying to your communication of the 17th instant wherein you asked to be advised as to whether or not the

bill creating the State Marketing Bureau carries with it an appropriation, I beg to advise that the law creating said bureau is Chapter 7315, Laws of Florida, Acts of 1917. The third section of this Act provides as follows:

"The Marketing Commissioner shall have his headquarters and hold his office in the city of Jacksonville, and upon the approval of the Commissioner of Agriculture may employ a clerk or clerks when necessary, but at no time may the expenses of the Marketing Commissioner exceed the sum of \$15,000 per annum, and the sum of \$15,000, or as much as is necessary is hereby appropriated out of the funds derived from sale of fertilizer stamps to be paid in the same manner as all other State expenses are paid." It is my opinion that there is not created by this Act a continuing appropriation from year to year.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

APPROPRIATIONS—MAY EXPENSES CLERK BE
PAID FROM CERTAIN.

Tallahassee, Fla., July 8, 1919.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 8th instant, in which you ask my opinion as to whether or not you would be authorized to approve a voucher covering traveling expenses of one of your clerk's trips on official

business for the office out of that item in the appropriation bill under the head of Commissioner of Agriculture, which reads as follows: "Traveling and other contingent expenses, Commissioner of Agriculture on official business."

Replying to your inquiry I beg to advise that it appears from the language used in this particular paragraph of the appropriation bill that the amount allowed thereunder was for the relief of the Commissioner of Agriculture himself, and would not be a proper fund out of which to pay traveling expenses as outlined by you. I beg to say, however, that I think such expenses as mentioned could be properly paid out of the funds provided in the next paragraph of the appropriation bill, under the head of Commissioner of Agriculture, which paragraph reads as follows: "Stationery and other contingent expenses, Agriculture Department."

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE EMPLOYEES—NOTARY FEES.

Tallahassee, Fla., July 16, 1919.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

Replying to your communication of the 9th instant, with reference to the practice of certain State employees rendering bills for notary fees at the end of the month for attesting official papers for the State, I beg to advise

that it is rather unusual for bills to be rendered for such services when performed in connection with the office in which such employee is engaged. Of course, where an employee in any department is appointed notary public, such expense as is incurred on account thereof, and the providing of a seal, should be borne by the office.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

FOODS AND FERTILIZERS—COLLECTING PEN-
ALTY FOR FAILURE TO COMPLY WITH LAW.

Tallahassee, Fla., August 12, 1919.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 5th instant, asking for my interpretation of Section 6 of both Chapters 5660 and 5661, Acts of 1907, as respects the manner of procedure by your department in collecting the penalties imposed upon the persons who sell commercial feed stuff or commercial fertilizer in this State which is not tagged as required by law; also asking for my opinion as to the same under Sections 4 and 5 of each of said Acts.

In reply I beg to advise that there seems to be no provision for the collection of the penalties prescribed in the sections numbered six other than the forfeiture of the articles, the proceeds of the sale provided for being required to be paid into the State Treasury.

In regard to Sections 4 and 5, I am of the opinion that the penalties there imposed may be collected by an ordinary suit at law by the Commissioner of Agriculture in some court having jurisdiction of the amount involved, this in addition to the forfeiture of the property by sale.

Very respectfully,

VAN C. SWEARINGEN,
Attorney General.

FOOD, DRUG AND FERTILIZER INSPECTORS—
PAYMENT OF EXPENSES—APPROVAL OF
VOUCHERS.

Tallahassee, Fla., August 1, 1919.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 8th ultimo asking for my opinion as to whether or not the Comptroller is authorized to pay detailed vouchers for expenses of the Food, Drug and Fertilizer Inspectors of the Department of Agriculture, upon the approval of the Commissioner of Agriculture *only*.

In view of the provisions of Chapter 6541, Laws of 1911, a construction of which, insofar as it relates to the subject matter of your inquiry, is involved, I am of the opinion that the Comptroller would be authorized to pay such vouchers upon the approval of the Commissioner of Agriculture only as the statute mentioned seems to contemplate the approval of the latter officer only as a prerequisite to the Comptroller's favorable action thereon.

This conclusion in nowise conflicts with the views expressed in the opinion by this office rendered to the State Chemist December 7th, 1917, and appearing at page 347 of the report of the Attorney General covering the period of January 1, 1917, to December 31, 1918.

Very respectfully,

VAN C. SWEARINGEN,
Attorney General.

LAWS—CONSTITUTIONALITY OF CHAPTER 7919,
PROVIDING FOR HOG CHOLERA SERUM, ETC.

Tallahassee, Fla., August 19, 1919.

Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.

Dear Sir:—

I beg to acknowledge receipt of yours of the 15th instant asking for my opinion as to whether or not Chapter 7919, Acts of 1919, is operative, by which you mean, as I take it, that you desire my opinion as to whether or not it is constitutional.

The title of this Act is: "An Act to Provide Hog Cholera Serum and Virus for the Suppression of Hog Cholera in the State of Florida."

The purpose of the Act thus expressed in the title is the suppression of a disease among hogs which, as a matter of common knowledge, is extremely deadly to that species of animal.

The means to the end sought, as expressed in the title, is the providing of serum and virus the treatment with

and application of which is a preventative, which is also a matter of common knowledge.

Section 16, Article 3 of the Constitution, provides that "Each law enacted in the Legislature shall embrace but one subject and matter properly connected therewith, which subject shall be *briefly* expressed in the title."

Our Supreme Court has held in the case of *State v. Bryan*, 50 Fla. 283, 39 So. 929, "It is sufficient that the title should express the subject and it is not necessary for it to set out the matter properly connected therewith." Citing *State v. County Commissioners*, 23 Fla. 483, 3 So. 193, *ex parte Wells*, 21 Fla. 280, *Schiller v. State*, 38 So. 706.

"If the title fairly gives notice of the subject of the act, so as reasonably to lead to an inquiry into the body of the bill, it is all that is necessary. It need not be an index to the contents."

Holton v. State, 28 Fla. 303, 9 So. 716.

State v. County Commissioners, *Supra*.

State v. Palmes, 23 Fla. 602, 3 So. 171.

State v. Green, 36 Fla. 154, 18 So. 334.

State v. Burns, 38 Fla. 367, 21 So. 290.

The title to the Act mentioned is so framed, it seems to me, "as reasonably to lead to an inquiry into the body of the bill." The first impulse ordinarily, of one reading the title, would be to follow into the body of the bill and thus determine as to how it was purposed therein to accomplish the purposes named in the title, viz.: "to provide hog cholera serum and virus."

In view of the rule that all reasonable doubts of the constitutionality of an Act should be resolved in favor of its validity and the above cited decision, it is my opinion that the Act mentioned is valid and operative.

Very respectfully,

VAN C. SWEARINGEN,

Attorney General.

GASOLINE—OIL INSPECTION LAW—PROVIDES
FOR FIXING STANDARDS.

Tallahassee, Fla., March 23, 1920.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 22nd instant reading as follows:

"Under Sections 1 and 14 of Gasoline Inspection Law, it is provided that the Commissioner of Agriculture shall fix standards of quality governing gasoline, kerosene, naphtha, benzine and other like products of petroleum to be used for cooking, heating and power purposes in the State.

These standards have been set covering gasoline and kerosene. It is desired to know if additional standards may be set covering naphtha, benzine and other like products contemplated by the law, and blends of such products.

"Mr. J. H. Sherrell, of Pensacola, applies for permission to sell a product composed of a mixture of Benzol (a product of the distillation of coal, not a product of petroleum) and Naptha (a product of petroleum.) We wish to be advised if this blend is taxable under this law; and also if it must conform to the standards set for gasoline, or if a separate standard must be set for same."

Replying to your communication I beg to advise that it is my opinion that under the provisions of Sections 1 and 14 of Chapter 7905, Laws of Florida, Acts of 1919, the Commissioner of Agriculture should fix standards of quality and promulgate rules and regulations covering the sale of the product which Mr. J. H. Sherrell of

Pensacola, Florida, applies to you for permission to sell in this State, and that under the provisions of Section 9 of said Chapter such product would be subject to the one-eighth cent per gallon tax as provided therein.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

FLORIDA CO-OPERATIVE COLONY—PLAN OF
DOING BUSINESS, ETC.

Tallahassee Fla., May 11, 1920.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 5th instant, to which are attached a copy of a letter to you from William Lee Papham, in regard to the Florida Cooperative Colony, together with several exhibits purporting to set forth the plan of organization and operation of said proposed Colony, and note that you request my opinion as to whether or not the plan of procedure as outlined by the exhibits is legal, and whether or not there is legal basis for the representations made in said exhibits.

I think that a sufficient reply to your communication would be an answer to the several inquiries propounded to you in the letter mentioned, and I shall adopt that course, the following paragraphs as numbered being responsive to the inquiry of the corresponding number.

1. The United States Government did make a survey of water bottoms in the Apalachicola Bay, but did not plant the same.

2. There are not now seven thousand acres of these bottoms, because they have been greatly depleted. The State has done considerable planting, but now there are considerably less than seven thousand acres, and the extent of the same is simply a matter of estimate.

3. This law provides that the Commissioner of Agriculture may lease any of these bottoms not claimed under some prior grant or alienation to citizens of Florida, firms composed of Florida citizens, domestic corporations and foreign corporations authorized to do business in this State. No one person or firm shall hold or own stock in more than one oyster or clam corporation, or firm leasing such bottoms. Such leases may be perpetual under the restrictions named in the law. The annual tax thereon is fifty cents per acre or fractional acre, paid in advance. No person, firm or corporation shall own, hold or control more than five hundred acres of such water bottoms, and any person, firm or corporation, which holds or controls or seeks or attempt to hold or control by partnership or otherwise, except under conditions named in the law, more than five hundred acres by any scheme, agreement or understanding, or combination whatsoever, or by any right whatsoever, shall forfeit all leases held by him or it.

4. It is a fact the law provides that after a period of ten years from the date of the lease, the rentals per annum shall be increased to a minimum of One Dollar per acre per annum, but until such time the annual rental is fifty cents per acre.

5. The duties of the Shell Fish Commissioner is to execute the laws governing the fish industry, but he is not required by law to see that each citizen of Florida who lawfully applies gets a bottom suitable for oyster culture. Each applicant makes his own selection, and

there is no guarantee that any official can give that the bottoms so selected are suitable for oyster cultivation. It is to be assumed, of course, that the Shell Fish Commissioner will do what he can to promote the industry, and will afford all the protection possible consistent with his powers and duties.

6. This inquiry is answered by the last sentence of the foregoing.

7. Experience in the commercial world has demonstrated, I think, that co-operation in certain enterprises is conducive to greater success than could be attained by individual efforts, but this is a matter of opinion and business policy as to which I would not undertake to advise in this connection.

The foregoing answers, I think, your inquiry as to whether or not there is legal basis for the procedure outlined by the exhibits mentioned, and the representations therein made.

As to whether or not the claims as to results are justified, I am not able to say, nor do I consider myself sufficiently familiar with the oyster industry to express an opinion, this being a matter within the knowledge of those experienced in the business.

I return all exhibits herewith.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

GASOLINE-OIL INSPECTION LAW—SAMPLES,
HOW OBTAINED.

Tallahassee, Fla., May 12, 1920.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of your communication of the 8th instant, asking for my opinion as to Section 8 of Chapter 7905, Acts of 1919, known as the "Gasoline Inspection Law," and stating that a certain dealer has refused to allow one of the Inspectors to draw a sample from his stock without paying for the same.

After a careful study of the section mentioned, together with other provisions of the law, I have reached the conclusion that in the absence of a provision requiring the dealer to furnish a sample of his stock free to an Inspector, the latter is without authority to take the same without paying for it.

The particular section mentioned authorizes the issuance of a search warrant to gain access to places where such oils are kept "for the purpose of examination, or inspection and drawing samples," but does not authorize the drawing of samples without paying for the same.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

GASOLINE OIL INSPECTION LAW—BEGINNING
OF FISCAL YEAR.

Tallahassee, Fla., July 14, 1920.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 14th instant, in which you ask for my opinion as to when the fiscal year of the Oil Division of the Department of Agriculture begins and ends.

Replying to your inquiry, I beg to advise that the law does not specifically fix the time of the beginning and ending of the fiscal year. The provisions of Section 12, Chapter 7905, Acts of 1919, are as follows:

“That on January 1st of each year, the balance, if any, remaining in the ‘Gasoline Inspection Fund,’ after all the salaries and other expenses for carrying out the provisions of this Act shall have been paid, shall be transferred by the State Treasurer to the State Highway Fund, and placed at the disposal of the State Road Department for construction and maintenance of the public roads of the State.”

Taking the above section of the law as a guide, it being the only provision thereof which in any wise touches upon the transfer of the balance, if any, of the Gasoline Inspection Fund, I am inclined to the opinion that the fiscal year for the operation of this law should begin January 1st and end December 31st of each year.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CONVICTS—COUNTY HIRING FEMALES.

Tallahassee, Fla., July 14, 1920.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 13th instant, with correspondence between Hon. John H. Carter and yourself relative to the question of the hiring out of county female convicts, and have noted what is stated therein.

Replying to your inquiry, I beg to advise that upon an examination of the law—Section 1, Chapter 7323, Acts of 1917, which, in part, reads as follows: "But no Board of County Commissioners shall lease or hire out any female convict (except for domestic or agricultural labors) or any male prisoners sick and diseased to such an extent as not to be able to perform manual labor." It is my opinion that the Board of County Commissioners may lease female convicts for domestic or agricultural labors. It would be a question of fact as to whether or not such convicts when leased perform such labors. I do not think that the law goes so far as to restrict the leasing of female convicts to any particular class of citizens. The limitation is upon the kind of service they are to perform, whether it be performed for a person in agricultural pursuits or other lines of endeavor.

The word "domestic" means "of or pertaining to one's house or home, or one's household or family." Therefore, when county female convicts are leased the lessee should observe strictly the terms of the law with reference to the kind of labor such convicts may be required to do.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

GASOLINE OIL INSPECTION LAW—PRODUCTS
SUBJECT TO TAX.

Tallahassee, Fla., September 15, 1920.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 13th instant, stating that the Sherrill Oil Company of Pensacola received a shipment of gasoline, which, upon analysis, did not come up to the required standard under Chapter 7905, Acts of 1919, and that said Company was given notice of such failure and thereafter sold the remainder of the shipment to another company to be used as a solvent.

I note that you request my opinion as to whether or not the gasoline sold by the Sherrill Oil Company to be used as a solvent is subject to the tax provided by the statute named.

In view of the provisions of the law that gasoline and other like products "used for illuminating, heating, cooking or power purposes sold, offered or exposed for sale in this State shall be subject to inspection and analysis," and that the same act provides for a tax upon such products, I am of the opinion that any such product used or intended to be used for other than illuminating, heating, cooking or power purposes is not subject to the tax. So much of said shipment, however, as was sold for either of the named purposes would be subject to the tax.

Yours very truly

VAN C. SWEARINGEN,
Attorney General.

FLORIDA CO-OPERATIVE COLONY—PROVISIONS
OF DECLARATION OF TRUST.

Tallahassee, Fla., September 15, 1920.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

Replying to your communication of the 7th instant, asking for my opinion as to the legality of the DECLARATION OF TRUST of the Florida Co-Operative Colony, especially with reference to the provisions of the second paragraph of Section 14 of the pamphlet prepared by the Shell Fish Commissioner, containing laws and rules governing the Shell Fish industry of this State, I beg to advise that according to the letter of the statute the controlling of, or the attempt to control more than five hundred acres of such water bottoms by any person, firm or corporation by any scheme, agreement or understanding or combination whatsoever, or by any right whatsoever, would subject such person, firm or corporation to a forfeiture of all leases held by such.

It would seem, therefore, that the Trustees named in the Declaration of Trust mentioned, copy of which is submitted with your communication, could not legally hold or control more than the named maximum acreage.

I return all papers herewith.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

FISHING—NON-RESIDENT LICENSE.

Tallahassee, Fla., April 17, 1919.

*Hon. J. Asakiah Williams,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 14th inst., enclosing letter from J. B. Richardson to Mr. L. S. Moody, Secretary of the Shell Fish Commission, with reference to the question of whether or not one George McCumberly should be required to pay a non-resident license for fishing in this State.

Replying to your communication I beg to advise that if Mr. McCumberly is a resident of this State at this time and it is his permanent place of abode, he would not have to pay this license. If, however, he is over the age of twenty-one years and is only in the State temporarily, even though he was born here and all his people live here, I think he would have to pay the license. These questions are matters of fact to be determined.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SHELL FISH COMMISSIONER NOT AUTHORIZED
TO PAY ATTORNEY FEES.

Tallahassee, Fla., June 16, 1919.

*Hon. J. A. Williams,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 12th instant, in which you state that in a certain proceeding in the Circuit Court of Putnam County you thought it best to employ counsel in addition to the State Attorney to represent you in such proceedings, and now desire to know whether or not you are vested with the authority to pay the attorney for services rendered out of the Shell Fish Fund.

Replying to your inquiry, I beg to advise that I do not think such an expenditure from the Shell Fish Fund is authorized under the provisions of the Statute.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

FISHING—WHEN BOAT LICENSE REQUIRED.

Tallahassee, Fla., August 14, 1919.

*Hon. J. Asakiah Williams,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 12th instant, as follows:

"In the salt waters adjacent to Key West are many resident fishermen who are engaged in operating boats in the salt water fishing industry of Florida, which boats they contend are exempt from the license tax as provided for by Section 14, of Chapter 6877, by reason of the fact that the fishing from these boats is conducted with hook and line.

"I have been holding that there was no tax on hook and line fishing when no boat was used in connection therewith, but that if such fishing was done from a boat and the fish sold that the boat was engaged in the fishing industry and therefore subject to the license provided by law.

"I will thank you to give me your opinion as to whether this office should collect a license from boats engaged in the salt water fishing industry when such boats are engaged in this industry as outlined in the first two paragraphs of this letter."

Replying to your communication, I beg to advise that under the second paragraph of Section 14 of Chapter 6877, Laws of Florida, Acts of 1915, it is provided:

"All boats or vessels engaged in the fishing industry in the salt waters of the State, before beginning operations, must first procure a police license from

the Commissioner of Agriculture, and for this purpose the owner, captain or agent of such vessel must present in writing to the said Commissioner of Agriculture an application setting forth the name and description of such vessel, name and post office of the owner, the number of nets carried by such boat, and any such further data as said Commissioner of Agriculture shall deem necessary, on blanks to be furnished by the Commissioner of Agriculture, and thereupon the Commissioner of Agriculture shall register such boat or vessel and shall issue necessary license on payment of cost thereof."

While the last paragraph in the Section of the law mentioned above provides that the payment of a license tax or the procuring of any license shall not be required of persons fishing only with hook and line, or rod and reel, or similar device, yet I take it that under the provisions of the paragraph of law above quoted that when a boat is engaged in the fishing industry in this State, whether the fishing industry be carried on with hook and line or otherwise, that the person or persons operating such boat are required to pay the license as required.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

FISHING—GENERAL LAW APPLICABLE TO
CLOSE SEASON ON MULLET—ESCAMBIA
COUNTY.

Tallahassee, Fla., November 12, 1919.

*Hon. J. Asakiah Williams,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir—

I am in receipt of your letter of the 28th ult., with reference to the question as to whether the General Salt Water Fish Law, Chapter 6877, Acts of 1915, as the same applies to close season for mullet, is now in force in the County of Escambia, or whether the Special Act of 1917, Chapter 7471, controls the close season for mullet in said County.

Replying to your inquiry I beg to advise that the title to the Special Act of 1917, (Chapter 7471) does not seem to cover the subject of a close season for mullet, and while the body of the Act, Section 3, fixes a close season for such fish, yet I do not think such provision is effective. Therefore it is my opinion that the provisions of the general law upon the subject would govern.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

FISHING—"HAUL SEINES" AND "DRAG NETS"
NOT DEFINED—USE OF NETS MAY DETER-
MINE CHARACTER.

Tallahassee, Fla., April 21, 1920.

*Hon. J. Asakiah Williams,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir—

Replying to your inquiry of the 9th inst., I beg to advise that the terms "haul seines" and "drag-nets" are not defined by the provisions of the Statute providing for the protection and regulation of the salt water fishing industry of this State. Webster's New International Dictionary defines a dragnet as being "A net to be drawn along the bottom of a body of water." -

Section 13 of Chapter 6877, Acts of 1915, makes it unlawful to take or catch any fish with haul seins or drag-nets in any or all of the salt waters of the counties of Volusia, Brevard, St. Lucie, Palm Beach, Broward and all salt waters in Dade County north of Biscayne Bay. Under the definition as given by Mr. Webster it is apparent that a net when dragged on the bottom of a body of water would be termed a dragnet. Any net or devise when used in fishing in the same way that what is commonly called a "dragnet" is used, would, in my opinion, be considered a "dragnet." The evident purpose of the Legislature was to prohibit dragnet fishing. A net may be fished in a way that would in no degree be violative of Section 13 above mentioned, but the same net may, when fished as a dragnet is used, be unlawful.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

FISHING—CONSTRUCTION OF LAW PERTAINING
TO NON-RESIDENTS AND ALIENS—PAYING
LICENSE.

Tallahassee, Fla., June 12th, 1920.

*Hon. J. Asakiah Williams,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir—

I am in receipt of your letter of the 10th instant, which, in part, is as follows:

"The Seminole Fertilizer and Oil Company have six non-residents or aliens in their employ who are engaged in operating boats and nets for this Company in the taking of fish from the salt waters of Florida. This firm sets up the contention that these non-residents and aliens, as well as the boats, are exempt from the payment of the two herein mentioned licenses because of the alleged fact that they are employed in the taking of fish on a straight salary basis.

"Please advise me if the fact of these men being employed on a straight salary basis in the taking of fish from the salt waters would exempt them from the payment of the two licenses provided for by Section 14 as above quoted."

Replying to your communication, I beg to advise that Justice Ellis, in a concurring opinion written in the case of *Curry v. Moran*, Sheriff, reported in 79 Southern Reporter, page 648, held as follows:

"The purpose of the fifth paragraph of the section is to impose a license tax upon each alien engaged in the fishing industry where his activities are employed on a boat engaged in such industry. One who assists in operating such a boat, either as a sailor, pilot, oarsman,

engineer or in any capacity requiring his presence on the boat is engaged in the fishing industry. If he is an alien, he is required to pay a tax of \$10 for engaging in such industry upon a boat. The allegation that he personally used a hook and line for catching fish is surplusage.

"An alien engaged in taking fish from salt waters, for other than his personal use, whether he works on a boat or not, comes within the provisions of paragraph 6 of Section 14, provided he uses other means than a hook and line or rod and "reed" (reel I suppose is meant), or similar device for taking the fish from the waters.

"The indictment charges an offense, because the defendant is an alien assisting in the operation of a boat engaged in the fishing industry and has failed to procure for himself a license for engaging in such industry.

"I think that an occupational or license tax may be required of an alien for engaging in such business in Florida waters, although no such occupational tax is imposed upon a citizen of the State engaged in such industry. Ex parte Gilletti, 70 Fla. 442, 70 South. 446; Geer v. State of Connecticut, 161 U. S. 519, 16 Sup. Ct. 600, 40 L. Ed. 793.

"It is true that the indictment does not negative the idea that the defendant had obtained a license under the sixth paragraph of the section, but if the payment of a license under that paragraph would relieve him from the payment of a license under paragraph 5 that would be a matter of defense.

"So I think the petitioner should be remanded."

This opinion is clear, and it is my opinion therefrom that it is necessary for licenses to be paid by or for non-residents or aliens in the employ of the Seminole Fertilizer and Oil Company.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

**FISHING—LICENSE FOR SPONGE FISHING
REQUIRED OF NON-RESIDENT.**

Tallahassee, Fla., July 25, 1920.

*Hon. J. Asakiah Williams,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:—

Replying to your communication of the 19th inst., asking for my opinion as to whether or not the \$50.00 license tax required by Chapter 5241, Acts of 1903, of persons not permanent residents of the State of Florida who shall engage in the business or occupation of sponge fishing, should be collected in addition to the boat tax required by Chapter 7389, Acts 1917, I beg to advise that in my opinion persons not permanent residents of the State of Florida who shall engage in the business or occupation of sponge fishing, either for himself or for any other person is liable to the \$50.00 license tax, and that in addition thereto each boat or vessel engaged in the sponge industry in the waters of the State, regardless of the residence of the owner or operator, should pay the license tax imposed by the Act of 1917, both to be collected by the Shell Fish Commissioner.

The term "Permanent resident" is not capable of exact definition, as residence is largely a matter of intention. I think that any person who comes to the State of Florida with the intention to permanently reside therein would be a permanent resident in contemplation of the law in question.

I return the letter of B. C. Williams herewith.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

FISHING—LICENSE TAX—DIFFERENT FROM AD
VALOREM TAX.

Tallahassee, Fla., Nov. 22, 1920.

*Hon. J. Asakiah Williams,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:—

Replying to yours of even date to which is attached a letter from Mr. F. A. Swain, City Clerk, Sarasota, Fla., asking for my opinion as to the proper construction of the 13th Paragraph of Section 14 of Chapter 6877, Laws of Florida, I beg to advise that there is a distinction between a license or occupational tax and an ad valorem or property tax. The quoted section of the law prohibits counties, cities and towns from levying any license taxes further than those imposed by the law, but specifically provides that the law in nowise affects the right of the municipality to levy ad valorem taxes on personal and real property.

My conclusion, therefore, is that the fishermen making the claim stated by Mr. Swain, are not supported by the law.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

FISHING—REFUND OF LICENSE.

Tallahassee, Fla., November 19, 1920.

*Hon. J. Asakiah Williams,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 18th inst., asking whether or not you will be authorized to approve a bill against the Shell Fish Fund in favor of Mr. Ricou for a refund covering five licenses issued to Mr. Ricou to cover fishing boats, which licenses are returned to you unused for the reason that the boats that have been used are no longer in commission.

Replying to your inquiry, I beg to advise that I do not think that you would be authorized to approve a bill covering a refund of the amount received for the licenses in question, the money having already been paid into the State Treasurer to the credit of the Shell Fish Fund.

I am herewith returning all enclosures.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

TAX COLLECTORS—WEEKLY DEPOSITS.

Tallahassee, Fla., October 3, 1919.

*Hon. J. Will Yon,
State Auditor
Tallahassee, Fla.*

Dear Sir—

I beg to acknowledge receipt of yours of the 18th ult., asking for my opinion as to whether or not County Tax Collectors would be complying with the provisions of Section 1, Chapter 7268, Acts of 1917, if they pay over once a week to one depository all moneys collected by them, and then make a distribution among the several depositories once a month.

In reply I beg to advise that I construe the section mentioned to mean that the weekly deposit therein required should be the final act of such collectors in connection with the moneys previously collected by them, and that it is their duty to make such weekly deposits in the depository or depositories 'legally entitled to receive the same.'

I think it would be contrary to the spirit and intent of the Act mentioned if not of its strict letter for such collectors to arbitrarily select one of the depositories "legally entitled" to receive such moneys to the exclusion of others equally entitled,—the money thus deposited to remain in such selected depository for the month or any period longer than that mentioned in the statute, then to be distributed to others equally entitled in the first instance.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

BONDS—FOR FINE AND COSTS—IN CRIMINAL
CASES.

Tallahassee, Fla., October 31, 1919.

*Hon. J. Will Yon,
State Auditor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 18th instant asking me to advise you whether or not the Supreme Court has held that the State cannot force the payment of a bond for fine and costs in criminal cases and at the same time require the convict to serve a sentence.

In reply I beg to advise that if our Supreme Court has rendered such a decision I have been unable to find it. I do not think it has.

However, in view of the closing language of Section 4019 of the General Statutes; "Until the same has been fully paid and satisfied," I am of the opinion that upon default in the payment of the bond action may be taken thereon as prescribed and at the same time the convict may be proceeded against just as if the bond had never been given: but if and when the bond has been paid and satisfied, then the right to further enforce the sentence against the person of the convict ceases.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

FINES AND COSTS—DUTY OF OFFICERS COLLECTING SAME.

Tallahassee, Fla., October 31, 1919.

*Hon. J. Will Yon,
State Auditor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 18th and the 23d instant, the latter quoting from a letter to you from County Judge of Okaloosa County, Hon. T. R. James, in reference to the collection of fines and costs and note that you desire my opinion as to the duties of County Judges, Justices of the Peace and Sheriffs as to the disposition of fines and costs collected by them.

The statutes which govern these matters seem to contemplate that if payment of fine and costs by one against whom a forfeiture is adjudged in such courts is made within twenty-four hours after judgment (sentence) it shall be made to the Judge of the proper court. If not paid within twenty-four hours the Judge is required to issue the necessary process and place same in the hands of the Sheriff to whom alone can the payment then be made.

I think also that it is within the fair intendment of the statutes that each of these officers should pay the full amount of fine and costs into the proper depository, and that each should render his statements to the Board of County Commissioners for their respective fees.

The latter view seems the more reasonable because it frequently happens that courts do not tax the costs in addition to the fine and there is no law requiring them to do so; and in such cases it would, of course, be improper to deduct from the fine the costs to the respective

officers and jurors and witnesses. Further, to permit a Judge or a Sheriff to take upon himself the authority to deduct the costs would be provocative of a possible withholding of funds, one officer from another or from witnesses or jurors, with the probable difficulty of collection. It is my opinion that the only orderly way to proceed in such matters would be as above suggested; then a complete and accurate record and check could be made and kept of fees charged and collected which would be impossible or certainly impracticable under any other method.

I feel sure that, as stated in your communication, when the matter is fully explained to the officers of the State that none of them would refuse to allow the advice above rendered.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

ROADS AND BRIDGES—TRUSTEES OF SPECIAL
TAX DISTRICT NOT AUTHORIZED TO PAY PRE-
LIMINARY EXPENSES INCURRED IN BOND
ISSUE, ETC.

Tallahassee, Fla., September 29, 1920.

Hon. J. Will Yon,
State Auditor,
Tallahassee, Fla.

Dear Sir:—

Replying to your communication of the 27th instant in regard to the finances of Special Road and Bridge District No. 1, of Alachua County, I beg to advise that, in my opinion:

1. The trustees are not authorized to meet expenses incurred preliminarily to a bond issue under either the 1917 or 1919 Acts otherwise than by a loan, unless payment of such expenses can be postponed until a sale of the bonds, in which event payment from the proceeds of the sale would be proper.

2. There is no way by which loans negotiated for the payment of preliminary expenses may be repaid except out of the proceeds of the sale of bonds.

3. The Trustees should make refund to the interest and sinking funds sufficient to preserve the necessary balances.

4. The levy and collection of taxes to pay interest and establish a sinking fund for bonds authorized under 1917 Act, but never issued, are, in my opinion, invalid. All moneys, therefore, so illegally collected should be refunded to the taxpayer, or preserved and kept available to meet whatever contingency as may arise to a proper disposition thereof.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

GAME WARDENS—NOT ENTITLED TO PART
OF FINES.

Tallahassee, Fla., November 15, 1920.

*Hon. Marvin C. McIntosh,
Assistant State Auditor,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 13th instant, as follows:

"I beg to request that you kindly advise if Game Wardens appointed under Chapter 7311, Acts of 1917, are

entitled to receive one-third of fines imposed as provided in Section 32 of Chapter 6969, Acts of 1915."

Replying to your inquiry, I beg to advise that the Supreme Court in the case of *State ex rel. Clarkson v. Phillips*, 70 Fla., Text 358, holds that Section 32 of Chapter 6969, Laws of Florida, Acts of 1915, is violative of the State Constitution. At the time of this decision Section 32 above mentioned was the only provision of law providing for paying a part of fines imposed under the Game Law to the Game Wardens. There has been no provision of law enacted since said opinion providing for the payment to the Game Wardens of a part of fines imposed under the Game Law. I am, therefore, of the opinion that there is no law authorizing the payment to Game Wardens any parts of fines collected for conviction of violations of Chapter 6969, as amended by Chapter 7311, Laws of Florida, the same being the Game Law of the State.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General

STATE HEALTH OFFICER—EXPENSES OF.

Tallahassee, Fla., February 3, 1919.

Hon. C. T. Frecker,
Tampa, Fla.

Dear Sir:—

I am in receipt of your letter of the 31st ult., with reference to the expense incurred by Dr. Cox in giving a banquet at the Mason Hotel to the amount of \$37.50, the same being charged to the State Board of Health, and

note that you desire to know whether or not such expense should be paid out of the State Board of Health funds.

Replying to your inquiry, I beg to advise that I know of no authority for approving this bill for payment out of State funds.

Yours very truly,

VAN C. SWEARINGEN.
Attorney General.

APPROPRIATIONS—STATE COLLEGE FOR
WOMEN.

Tallahassee, Fla., March 10, 1919.

*Hon. Bryan Mack,
Secretary Board of Control,*

Dear Sir:—

Your communication of the 8th instant received, involving a request of the Board of Control for an opinion as follows:

“When the Florida Legislature met in 1913 the Board of Control asked for an appropriation of \$140,000.00 for current expenses and buildings and improvements for the Florida State College for Women for the biennium beginning July 1, 1913, and ending June 30, 1915. The Legislature saw fit to add \$8,000.00 to the amount asked and made an appropriation of \$148,000.00, it being the general understanding that the \$8,000.00 be used to purchase a pipe organ for the college.

“Members of the Board of State Institutions have since that time objected to purchasing the pipe

organ, and for this reason the \$8,000.00 is still unspent. I am requested by the Board of Control to ask you for an opinion as to whether this money may be used for other improvements than the purchase of a pipe organ."

Replying to the above will state that an examination of the report of the Board of Control which contains the budget of 1913 discloses that it recommended that the Legislature of 1913 appropriate for the biennium beginning July 1, 1913, the sum of \$140,000.00 for the State College for Women. The third paragraph of Section 1, of Chapter 6438, Acts of 1913, making a biennium appropriation for State Institutions of higher learning reads as follows:

"For the Florida State College for Women One Hundred Forty-eight Thousand (\$148,000.00) Dollars."

This appears to be the only appropriation made that year for the Florida State College for Women, and I find no language in the statute, or the Journals of the Legislature, specifying that the Eight Thousand Dollars excess of the appropriation asked for was to be used to purchase a pipe organ. If this sum was intended to be used for that purpose and no other the practice of legislative bodies is to provide in the bill an item to that effect instead of making the appropriation unconditional. The law is, that an appropriation is unconditional when the statute names a general purpose, and as we have no way of determining from the statute or other records that the money was to be used to purchase an organ, it is my opinion that as the appropriation is unconditional that the Board would be authorized so far as the law is concerned to use this money either to purchase an organ, or for other improvements of the State College for Women. I will add that it might have been the intent of the Legislature to provide the funds for an organ, but to leave it

to the discretion of the Board of Control and State Board of Education as to whether or not a pipe organ should be provided. If the organ should cost seven instead of eight thousand dollars, under the wording of the statute, there could scarcely be a doubt that the remaining one thousand dollars could be used for other improvement purposes. It appears that this item of Eight Thousand Dollars has been carried forward from year to year since 1913, and is, therefore, held in the State Treasury subject to disposal or use.

Respectfully submitted,

VAN C. SWEARINGEN,
Attorney General.

BOARD OF CONTROL—BOARD OF EDUCATION TO
APPROVE ACT OF EXECUTION OF BOND.

Tallahassee, Fla., June 30, 1919.

*Hon. Bryan Mack,
Secretary Board of Control,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 27th instant, transmitting correspondence with reference to bonds to be executed by the Board of Control for certain military equipment the University of Florida has received from the United States Government, and note that you desire to know whether or not the State Board of Education should sign that bond with the Board of Control, or should approve the action of the Board in executing it.

Replying to your communication, I beg to advise that I do not think it necessary for the State Board of Education to execute this bond jointly with the Board of Control. However, under the provisions of Section 19 of Chapter 5384, Laws of Florida, Acts of 1905, I think that it would be proper for the Board of Education to take action approving the execution of said bond by the Board of Control.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CATTLE—NO PROVISION FOR PAYING FOR
DAMAGED OR THOSE KILLED FROM DIPPING.

Tallahassee, Fla., May 26, 1919.

*Hon. J. W. DeMilly, Secretary,
State Live Stock Sanitary Board,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your communication of the 26th instant, as follows:

“Has the State Live Stock Sanitary Board, under Chapter 7345, (No. 87), Laws of Florida, 1917, authority to pay for cattle damaged or killed as a result of dipping.”

Replying to your inquiry, will advise that I do not find any authority under Chapter 7345, mentioned in your communication, for the State Live Stock Sanitary

Board to pay for cattle damaged or killed from the effects of dipping under the supervision of said Board.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE LIVE STOCK SANITARY BOARD—NOT
AUTHORIZED TO FIX MINIMUM AND MAXI-
MUM FOR APPRAISING DISEASED CATTLE.

Tallahassee, Fla., September 19, 1919.

*Hon. J. W. DeMilly,
State Veterinarian,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of your letter of the 17th instant as follows:

“Your opinion on the following question is desired: Reference—Chapter 7345, No. 87, Acts of 1917. In order that the Board might conform strictly to the law of Section 11, would we have the right to make regulations establishing a maximum and minimum amount of appraisal to be paid in case of diseased animals.”

Replying to your communication I beg to advise that Section 11 of Chapter 7345, Laws of 1917, provides as follows:

“The State Live Stock Sanitary Board shall have the power to condemn and destroy any live stock affected with any contagious, infectious or communicable disease, or any live stock which has been exposed to, or suspected of being liable to communi-

cate the contagion or infection of any contagious, infectious or communicable disease and to condemn and destroy any barns, sheds, yards, corrals or pens which the said Board has reasonable cause to suppose are liable to convey the said infection or contagion. Said condemnation and destruction shall take place only after a fair appraisal of the value of the property by three disinterested appraisers; one to be appointed by the State Live Stock Sanitary Board, another by the owner of the property, and the third appraiser to be selected by these two, and such appraised price shall be paid by the State Live Stock Sanitary Board in the same manner as other expenses are paid." * * *

It appears from this provision of law that the condemnation and destruction of any live stock for any of the causes listed in said section can take place only after a fair appraisement of the value of the property by three disinterested appraisers appointed as provided in the law. I do not think that the State Live Stock Sanitary Board has the right to promulgate a regulation establishing a maximum and minimum amount within which appraisements shall be made.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

STATE ROAD DEPARTMENT—EXERCISE OF EMI-
NENT DOMAIN—PROPER PROCEDURE.

Tallahassee, Fla., July 11, 1919.

*Hon. M. M. Smith,
State Road Department,
Tallahassee, Fla.*

Dear Sir:—

Complying with your verbal request of the 10th instant for information as to the procedure in the exercise by the State Road Department of the Right of eminent domain, I beg to say that the Department will necessarily have to proceed under Section 2008, et seq., of the General Statutes. After the filing of the petition setting forth the matters required by the statute the necessary process will be issued by the Clerk of the Circuit Court and the defense will be required to appear and answer on the return day, which is the second rule day after service of process. The Circuit Judge is authorized to try the case in vacation, and upon judgment being rendered and your paying the amount fixed by the jury into the registry of the court you would have the right to proceed with your operations, the law being plain in its provision that no appeal or writ of error shall operate as a supersedeas when the petitioner has paid the money into the court.

When you were in the office yesterday I was under the impression that a trial could be had in a much shorter time, but after an investigation I find that you will have to be governed by the statute above mentioned. For instance, if you were to file your petition today or at any time more than ten days prior to the first Monday in August, then the defendants would have until the first Monday in September to answer, and a trial could

be had at any time thereafter, provided there were no delays in settling the pleadings.

I believe that the above is a full compliance with your request, but if not please do not hesitate to call for further information.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

STATE ROAD DEPARTMENT—WHEN SALARY OF MEMBERS BEGINS.

Tallahassee, Fla., August 4th, 1919.

*State Road Department,
Tallahassee, Fla.*

Gentlemen:—

Replying to your communication of the 1st inst., asking my opinion as to when the salary of fifty dollars per month allowed the members of the State Road Department under the Act of 1919, other than the Chairman, should begin, beg to say that the Act in question took effect on the day of its approval, viz: June 11th, 1919. While there is no specific provision as to when the increased emolument should be operative I am of the opinion, that, in view of the fact that such members were in office at the time the said Act took effect and by the Act were continued in office until the expiration of their respective terms, the salaries should begin as of the 11th of June, 1919.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

CONVICTS—STATE PRISON AUTHORITIES TO DELIVER TO STATE ROAD DEPARTMENT.

Tallahassee, Fla., December 17, 1919.

*Hon. M. M. Smith, Chairman,
State Road Department,
Tallahassee, Fla.*

Dear Sir:—

Replying to your inquiry of even date, asking for a construction of Section 2 of Chapter 7833, Acts of 1919, as to whether or not the State prisoners now held by private lessees and at the State Prison Farm will be required to be delivered to the Road Department at any point or points designated by the Road Department, I beg to say that in my opinion it will be the duty of the State Prison authorities to deliver to the State Road Department at the point or points designated by the latter all convicts assigned to the State Road Department and graded in December, 1919, and held at the State Prison Farm.

I am of the same opinion with reference to the prisoners in the hands of private lessees, but upon their refusal I know of no way to enforce such delivery unless the same is provided in their contracts.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

ROADS AND BRIDGES—BONDS TO COVER CONTRACTS FOR ROAD CONSTRUCTION.

Tallahassee, Fla., December 18, 1919.

*Hon. M. M. Smith, Chairman,
State Road Department,
Tallahassee, Fla.*

Dear Sir:—

I have your communication of even date, asking for my advice as to the law pertaining to the requiring of bonds by your department where contract for road construction is let.

Replying I beg leave to advise that there appears to be no specific provisions of law upon the point. However, under the authority of Section 1 of Chapter 7900, Acts of 1919, which is as follows: "The department shall have power to adopt and enforce rules and regulations for the government of its meetings and proceedings and for the transaction of the business of said department;" and the following provision of Section 4 of the same chapter, "and to make such rules and regulations as may be necessary for the construction and maintenance of such roads, highways and bridges as may be by law or by resolution of any Board of County Commissioners," etc., I am of the opinion that the State Road Department may exercise its own discretion with reference to the requiring of bonds for the faithful performance of contracts for road construction.

Permit me to suggest, however, that of late years the tendency of State and county governments has been to require surety company bonds in matters of this sort in preference to those by individuals.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE ROAD DEPARTMENT—NOT AUTHORIZED
TO PURCHASE BONDS.

Tallahassee, Fla., March 17, 1920.

*Hon. M. M. Smith, Chairman,
State Road Department,
Tallahassee, Fla.*

Dear Sir:—

I beg to acknowledge receipt of yours of the 28th ult., asking for my opinion as to whether or not there is "anything in the law pertaining to the highways of the State, or in the organic law creating the State Road Department, which would act as a legal preventative of the Road Department purchasing any county bonds of the State, through which a State road has been designated for construction."

Replying to your communication, I beg to say that I find no express authority for the State Road Department becoming the purchaser of such bonds.

In view of the fact that your department, like others of the same character, has only such powers as are by fair implication included in and covered by those expressly granted, I am of the opinion that the State Road Department could not legally become the purchaser of such bonds. However, I am of the further opinion that the State Road Department may, under proper terms and conditions, accept, in lieu of money, negotiable securities—such as certificates of deposit, time warrants, and regularly issued valid and validated bonds, issued by the counties for road purposes, to be accomplished by and in connection with the State Road Department pursuant to and under the authority conferred upon it by law.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE ROAD DEPARTMENT—AUTHORITY TO
RELEASE SURETY ON BOND.

Tallahassee, Fla., April 13, 1920.

*Hon. M. M. Smith, Chairman,
State Road Department,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 7th instant in reference to contract of W. H. Thomas and note that you desire my opinion as to whether or not your department can, without subjecting itself to liability for outside obligations of the contractor, release his surety from liability on the bond given for the faithful performance of the contract and containing the provisions prescribed by law for such bonds.

Replying I beg to advise that in my opinion you can release the contractor and surety from liability to the State, but not as to material, men and laborers who would still have their remedy against the surety as provided by the Act of 1915. A release by your department from liability to the State would not have the effect of releasing or discharging liability to material, men and laborers, nor would the department thereby, in my opinion, render itself or the State liable to such material, men or laborers.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE ROAD DEPARTMENT—BONDS OF COUNTY
TO BE TRANSFERRED TO.

Tallahassee, Fla., April 27, 1920.

*Hon. M. M. Smith, Chairman
State Road Department,
Tallahassee, Fla.*

Dear Sir:—

I am in receipt of yours of the 26th instant accompanied by copy of the opinion of John C. Thompson, Esq., as to the legality of the proposed transfer by Columbia County of Four Hundred Thousand Dollars of its Road Improvement Bonds to the State Road Department and the acceptance thereof by the latter in lieu of the equivalent thereof in cash, or other liquidated assets, and note that you desire my opinion upon the point in the light of the opinion referred to.

Having, upon a former occasion, advised that I was of the view that there was no legal obstacle in the way of such transfer and acceptance by your Department, but it being desirable that the views of Mr. Thompson, a profound lawyer and recognized expert in matters of this sort, be obtained before consummating the deal, I have not pursued the study of the proposition of law involved, and do not now understand that you wish an expression from me independent of the views of Mr. Thompson.

I, therefore, have only to interpret for you, to the best of my ability, Mr. Thompson's views, and to state what seems to me to be his conclusions.

In the first place, he finds that all resolutions adopted by your Department and Columbia County containing the designation "State Roads," with reference to the roads involved, are erroneous and should be changed to read "State Aid Roads." His reasons for this are that

"State Roads" and "State Aid Roads" are separate and distinct in that the construction of the one is by the statute contemplated to be by the State alone, and the other by the aid of the counties, and that these roads are, as a matter of fact as now proposed to be constructed, State Aid Roads.

In the second place, and, indeed, upon this premise the whole matter may be summed up, he expresses what is considered in legal circles grave doubt, though the language he adopts is not in positive terms, as to the power and authority of the State Road Department to take over the bonds in the manner suggested. He says "the question then, so far as I can now see, is whether legislation in relation to the State Road Department is such that it authorizes a contract between the County Commissioners and the State Road Department," etc. He goes on to quote certain provision of the law and to comment thereon, concluding just before his recommendations, "Although I do not feel that the matter is so free from doubt that I could recommend the County Commissioners or the State Road Department to act upon that basis without some more authoritative ruling."

The language just quoted means, as I take it, that he advises against the proposed action without legislative or judicial sanction.

His recommendation, except as to the change in the resolutions as to the name by which the roads are called, is that a test suit be had in order that the matter may be judicially determined.

Of course, only in this way can the question be finally settled, which we knew at the outset. Yet, since your Department's acceptance of the proposed transfer was conditioned upon the favorable opinion of Mr. Thompson, and since he advises, in the sixth paragraph of his opinion, against the proposed transfer without previous judicial sanction, I can do no less than say that un-

doubtedly that would be the only absolutely safe course to pursue.

If your Department and Columbia County should decide to go ahead with the matter, I would suggest, in line with Mr. Thompson's views, that the suggested changes in the resolution be made, and the records of both parties be otherwise complete to the end that all the facts may be presented for the court's consideration upon the pleadings, and that both your Department and Columbia County formally adopt resolutions carrying out the arrangement, but with all action subject to revocation and all parties to be restored to the status quo ante upon an unfavorable judicial determination.

In this connection, no doubt, some taxpayer might be prevailed upon to institute the necessary proceedings preferably by injunction, and in the Supreme Court, if it could be persuaded to take original jurisdiction in the friendly suit, in which the whole matter could be thoroughly threshed out, and the question forever settled. Otherwise, future legislation would have to be depended upon.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

APALACHICOLA BRIDGE—PAYMENTS TO CON-
TRACTORS.

Tallahassee, Fla., July 14, 1920.

*Hon. M. M. Smith, Chairman,
State Road Department,
Tallahassee, Fla.*

Dear Sir:—

In regard to the differences between your department and Masters & McMullen Construction Company over the construction of the Apalachicola River bridge, I beg to advise that after several hours' discussion with Mr. Mullen, of the contracting firm, yourself, Major Brown, and Mr. Mortland, of the Engineering Department, in which the contract and correspondence touching upon the subject matter of these differences were more or less thoroughly examined and considered, I have reached the following conclusions:

1st. That the contractors are entitled to be paid for Pier No. 9 at the rate of One Thousand Dollars per foot for the driving of the steel piling from an elevation of 34.5 to the average depth to which such piling had been driven when the driving was stopped by the contractors.

2nd. That the contractors are entitled to be paid for all rock excavations of Pier No. 9, beginning three feet below the level to which excavations would have had to be made for the piling foundation which was contemplated originally, the three feet being the distance which your department could, under the terms of the contract, have required the contractors to go for such piling foundation; such excavation to be paid for at a price to be agreed upon. If no agreement can be reached, then the work to be paid for on the force account basis, provided in the contract, and which would be proper to in-

clude as an item of cost upon which to base the percentage and proportionate part of the liability insurance carried by the contractors.

I have not undertaken to give the reasoning upon which these conclusions are based, because to do so would be to make a document of considerable length, and would serve no useful purpose. I shall, however, be glad to give my reasons verbally if you so desire.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

ROADS AND BRIDGE—STATE AID FOR
AUTHORIZED.

Tallahassee, Fla., July 15, 1920.

*Hon. M. M. Smith, Chairman,
State Road Department,
Tallahassee, Fla.*

Dear Sir:—

Yours of the 3rd inst., making certain inquiries as to the power of your department to furnish rock from the quarries leased by it for road construction purposes to counties, contractors or individuals, was duly received and I regret that I have been unable to reply within the desired time.

Answering your questions in their order, I am of the opinion:

1st. That it would be legal for your department to supply counties with rock for the construction and maintenance of State Aid Roads to any extent not exceeding 50 per cent. of the cost of such construction.

2nd. That it would be legal for your department to furnish rock for the construction of State or State Aid

roads by contractors the same to be considered in the contract price. In other words, your department may legally supply the material out of which such roads are to be constructed.

3rd. Your department may not legally furnish rock to town or city governments for the construction of streets within such cities or towns.

4th. Your department may not legally furnish rock to individuals or companies for the development of subdivisions in any county.

5th. Your department may not legally sell its surplus rock for agricultural or other purposes.

6th. Your department may not legally sell dust, the residue obtained in crushing or screening rock, for road material, assuming that such dust can be utilized only for purposes other than road construction.

The negative answers to queries Three, Four, Five and Six are upon the theory that your department cannot be permitted to enter the commercial field in competition with private persons or corporations who might be or become engaged in the business of quarrying rock for road purposes and the selling of by-products for other purposes.

It occurs to me, however, that legislative authority would very properly be given for the disposition of the by-products of the quarrying at cost in wholesale quantities, but I doubt the validity, certainly the policy, of giving the department power to use the property of the State, acquired and operated in a purely governmental capacity, in any commercial enterprise, as would be the case if the department had the right to do the things indicated by the queries to which negative answers have been given above.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

APPROPRIATION—CONSTITUTIONALITY OF
AMENDMENT TO GENERAL APPROPRIATION
ACT.

Tallahassee, Fla., May 30, 1919.

*Hon. Geo. H. Wilder,
Speaker House of Representatives,
Capitol.*

Dear Sir:

I have received House Resolution submitted for my opinion upon the question involving the legal status of an amendment to Senate Bill 373, said Resolution reading as follows:

"BE IT RESOLVED by the House of Representatives, That the Attorney General be and he is hereby required to render to the House his opinion as (1) to the constitutionality of the amendment making an appropriation for the purpose of carrying out the provisions of the Act of 1917 creating the Live Stock Sanitary Board, adopted as a part of Senate Bill 373, and (2) whether the said amendment if vetoed or declared unconstitutional as to the item mentioned would affect the constitutionality of said bill as it relates to and covers other items."

Answering the first question involved in the Resolution will state that in my opinion the amendment to Senate Bill 373 is not in conflict with any provision of our Constitution. It is assumed that the House of Representatives had in mind Section 30 of Article III of our State Constitution, the correct and original draft of which reads as follows:

"Laws making appropriations for the salaries of public officers and other current expenses of the State shall contain provisions upon no other subject."

The amendment involved in the above Resolution unquestionably covers "a current expense" inasmuch as the Live Stock Sanitary Board is an arm of the State Government.

Our Supreme Court has recently held that the purpose of the constitutional provision quoted above "is to prevent including in bills appropriating money to carry on the government of the State measures foreign to that purpose. The amendment referred to has reference only to an item of appropriation to be used in defraying the current expenses of an arm of the State Government.

The title to Senate Bill 373 has for its purpose the making of an appropriation for the salaries and expenses of the State Government for the two-year period beginning July 1, 1919, and the amendment involved is germane to that subject, and the fact that the said amendment quotes the title to Chapter 7345, Laws of 1917, and might have been stated in fewer words, does not affect its validity as an item of the general appropriation bill.

Answering the second question involved in your Resolution will advise that the rule in this State is that if a duly enacted statute contains provisions that are invalid because in conflict with our Constitution and said invalid provisions may be severed and the remainder may then be affected for the purpose designed, and will not cause results not intended by the Legislature, and it does not appear that the Statute would not have been enacted without the invalid portion, the invalid portion of the Act may be disregarded and the valid portions enforced if it can be done to effectuate the legislative intent.

Under the above rule, the amendment to Senate Bill 373 could be declared unconstitutional and eliminated without affecting in any way the valid portion of the remainder of the General Appropriation Bill.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

STATE BOARD OF ENGINEERING—CERTAIN ACT
CONSTITUTES PRACTICING PROFESSION.

Tallahassee, Fla., April 15, 1920.

*Hon. C. S. Hammett,
Secretary State Board of Engineering Examiners,
215 East Bay Street,
Jacksonville, Fla.*

Dear Sir:

I have your letter of April 12th with reference to the question of engineers who are not registered in this State submitting plans and designs for a bridge at St. Petersburg, which were not signed or submitted by a registered engineer, and note that you desire my opinion as to whether or not the submitting of such plans and design would in my opinion constitute practicing engineering in this State.

Replying to your communication, I beg to advise that it seems to me that under Paragraph B of Section 1, Chapter 7404, Laws of Florida, Acts of 1917, the submitting of plans and designs for a bridge would be within the terms covered by professional engineering and would constitute practicing such profession.

You will note under Section 19 of the above mentioned law that it is provided that the Act shall not apply in certain cases.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

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UNOFFICIAL LETTERS OF THE ATTORNEY GENERAL

The following are some of the letters written in answer to the unofficial communications referred to heretofore in this report. These letters are of a general character, and may be of some benefit to county officials and the public generally; therefore, they are incorporated herein.

COSTS IN SUMMONING GRAND JURY.

Tallahassee, Fla., February 5, 1919.

Dear Sir:—

Your letter of the 24th ult. duly received, in which the following question is asked:

‘I have just closed a term of the Circuit Court in Seminole and in making up the cost of some convictions there the Sheriff and the Clerk of the Court both inquired should they include in the costs of the case the summoning by the Sheriff of the witnesses before the Grand Jury—in other words, does the costs of the case include the services of the Sheriff in summoning the Grand Jury witnesses?’

Replying to the above will advise that Section 4057 of the General Statutes provides that “In all cases of conviction for crime, the costs of *prosecution* shall be included and entered upon the judgment rendered against the convicted person.”

I find that the Supreme Court has held that the Constitution (Art. 16, Sec. 9) does not impose upon the several counties of the State the duty of paying the per diem and mileage of witnesses before the Grand Jury. *State v. Croom*, 48 Fla. 176.

It will be observed that under the statute above quoted the costs of *prosecution* shall be included in the judgment rendered against the convicted person. If the case was started in the Justice of the Peace Court, the witnesses are usually recognized to appear before the Grand Jury and therefore there would be no Sheriff's costs, and prosecution would start when the affidavit is filed in the Justice Court. On the other hand, if the case was one in which the Grand Jury took the initiative the prosecution would not start until the indictment is filed, and under the latter circumstances it may be that the costs of the Sheriff and Clerk should be paid by the State, but I think you will find that it has not been customary in the various counties to include in the costs to be paid by the defendant the Sheriff's and Clerk's costs as mentioned in your letter.

I regret that I am unable to give you any more definite information upon this subject, but we only have the Constitution, Statutes and decisions to guide us, and it seems that the exact point has not been adjudicated by the Supreme Court.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CHILD UNDER FOURTEEN NOT TO BE COMMITTED TO JAIL.

Tallahassee, Fla., February 3, 1919.

Dear Sir:—

I am in receipt of your letter of the 31st ult. regarding the sentencing of one Garfiend Johnson, a colored boy about ten years old, to six months' imprisonment, and note what you have to say with reference thereto.

Under the provision of Section 1208-10, Compiled Laws of 1914, same being Section 11, Chapter 6216, Acts of 1911, it is provided that no court or magistrate shall commit a child under fourteen years of age to a jail or police station, etc.

I would suggest that you look over the above chapter of law, and it is possible that you may be able to find how to proceed in the above-mentioned case.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

TAXATION—EXEMPTIONS.

Tallahassee, Fla., February 3, 1919.

Dear Sir:—

Replying to your letter of the 30th ult, I beg to advise that Paragraph 4 of Section 4 of Chapter 5596, Laws of Florida, Acts of 1907, exempts houses of public worship from taxation, but there is contained in this paragraph of the law the following: "But any building being a house of worship which shall be rented or hired for any other purpose except for schools or places of worship shall be taxed the same as any other property."

From the above mentioned and quoted section of the law, it would appear that the renting of houses of worship would subject them to taxation.

Yours very truly ,

VAN C. SWEARINGEN,
Attorney General.

CATTLE—IMPOUNDING.

Tallahassee, Fla., March 10, 1919.

Dear Sir:—

I have your letter of the 4th instant with newspaper clipping enclosed with reference to the question of the validity of an ordinance of your town providing for the impounding of cattle.

Replying, I beg to advise that if your town has a population of less than five hundred inhabitants that under the provisions of Section 1105 it has not the authority to impound any hogs of residents living outside its limits, and that if it has not as many as twelve hundred bona fide inhabitants it has no authority to pass an ordinance to impound cattle of residents who live beyond its limits. This section of the law seems to be perfectly clear.

Section 1046 is a provision covering cities and towns not within the class of Section 1105, above mentioned.

You, of course, understand that it is not the duty of the Attorney General to officially advise on questions of this kind, therefore what is above written, can not be considered as an official expression from this office.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

SCHOOLS—SITE FOR SCHOOL BUILDING.

Tallahassee, Fla., March 11, 1919.

Dear Sir:—

Replying to your letter of the 8th instant, I beg to advise that the 4th paragraph of Section 347, Compiled

Laws of 1914, provides that the Board of Public Instruction shall select and provide a site for each school house of not less than one-half acre of ground in the rural district, and as near that amount as possible in the villages and cities.

I take it from this provision of law that the Board of Public Instruction of the county and not the Trustees of the Special Tax School Districts is the one to select a site for a school building.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

COSTS — JUSTICE OF PEACE MAY REQUIRE DEPOSIT FOR.

Tallahassee, Fla., June 18, 1919.

Dear Sir:—

Replying to your letter of the 14th instant, I beg to advise that under the law Justices of the Peace may require a deposit for costs before issuing warrants, unless the party applying for warrants makes an affidavit of insolvency. See Section 4072, General Statutes.

I do not know of any law authorizing the Board of County Commissioners to advance money for the payment of costs. It occurs to me that this is a matter that should be determined by the Board.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

LICENSE—MOTOR VEHICLES—TRAILERS.

Tallahassee, Fla., June 25, 1919.

Dear Sir:—

Replying to your letter of the 21st instant, asking for my construction of the automobile license tax law, I beg to say that, in my opinion, trailers attached to a truck are no part of the truck itself and that the tonnage should be calculated with reference to the capacity of the trailer, whether one or more, separate and distinct from the capacity of the truck drawing same.

The existing law provides for certain license tax to be paid upon trucks of designated capacity, but there is a provision, as you are no doubt aware, to the effect that no license tax shall be required for a single trailer of not more than five hundred pounds capacity. I think the law is entirely clear that the capacity of the trailer is not to be considered as a part of the capacity of the truck.

Trusting that this answers your inquiry fully, and if not that you will ask for further information, I am,

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

PEDDLING—CANVASSING.

Tallahassee, Fla., June 25, 1919.

Dear Madam:—

I beg to acknowledge receipt of yours of the 20th instant, asking the following questions.

1. Does peddling and canvassing come under the same head? 2. What are the fees? 3. Are they issued by County of State?

Replying to these questions in order, I beg to advise that peddling and canvassing in the contemplation of law are separate and distinct operations. Ordinarily, peddling is the selling from house to house of goods which are immediately delivered by the seller. In other words, the stock is carried by the "peddler." Canvassing in the same sense is the taking of orders and is usually applied to agencies through which goods are sold from some place known as headquarters. The license tax upon peddling in the State of Florida is generally very high. For instance, peddling generally is liable to a license of \$150.00 per year in each County. Peddling from wagons selling stoves, ranges and clocks is liable to a license of \$75.00 per year in each County. Peddling from boats is liable to a license ranging from \$15.00 up, depending upon the size of the boat.

The State is not permitted to levy a tax upon canvassing in its ordinary sense where the goods are not delivered but orders simply taken therefor by the agent. This, however, applies only to interstate commerce. That is, where the orders are taken in one State for goods which are at the time in another State, and are to be delivered to the agent by wholesale and by him delivered to the purchaser in the original package.

The licenses above mentioned are payable in the respective counties.

If this letter does not give you the information you desire, and you will advise me in what particular line of business you wish to engage, I shall be pleased to render you an opinion as to that particular business.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SHERIFFS—MILEAGE.

Tallahassee, Fla., July 8, 1919.

Dear Sir:

I be to acknowledge receipt of yours of the 2nd instant, and reply thereto have to say that in my opinion Sheriffs would not be entitled to charge and collect for themselves more than one mileage for conveying prisoners, as this would be clearly constructive mileage, the charging of which is prohibited by Section 1684 of the General Statutes of Florida. I think this is the law, whether or not the prisoner is convicted.,

I am sorry that I have not a copy of the latest law upon this subject, but my information is that it makes no change in the old law with reference to this particular item.

If you have a copy of the law, and will send me the same, marking therein the particular section involved in your inquiry, I shall be pleased to give you the benefit of my views upon the same.

Yours very truly,

Attorney General.

CLERK CIRCUIT COURT—RECORDING ORDERS.

Tallahassee, Fla., July 8, 1919.

Dear Sir:

I beg to acknowledge receipt of yours of the 3rd instant, in which you asked for my opinion as to whether or not the Clerk of the Circuit Court is required to record all orders for process.

Replying to your inquiry, I beg to say that Section 1866 requires the Clerk under appropriate circumstances to make order requiring the defendant or defendants to appear. Section 1831 requires the Clerk to keep a Chancery Order Book, in which shall be entered all orders taken in chancery, except those required to be signed by the Judge exclusively.

In view of the provisions of law above mentioned, it is my opinion that orders such as you mentioned are required to be recorded in the Chancery Order Book, and that, therefore, the Clerk would be entitled to his fees for the same. I think that an order of this sort is of the same nature as a decree pro confesso, which, as you are aware, is required to be recorded in the same book as other Chancery Orders taken as of course and which are not signed by the Judge.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

FISHING—TRAPS—ORANGE COUNTY.

Tallahassee, Fla., June 27, 1919.

My Dear Sir:

I am in receipt of your communication of June 25th asking to be advised if it is illegal under the laws of Florida to set a fish trap in a lake or stream for the purpose of catching fish for family use, in Orange County, Florida.

Replying to your inquiry, I beg to advise that under the provisions of Chapter 7544, Laws of Florida, Acts of 1917, it is provided that it shall be unlawful for any person or persons at any time to catch or take any fish .

in the fresh water lakes, streams, canals or other fresh waters of Orange County by means of any seine, net, basket, trap, or other device or means other than in the manner mentioned in Section 1 of this Act.

Section 1 of this Act only provides for fishing with hook and line, bob, spinner or troll, therefore it is readily seen that you could not use a net or basket or trap as mentioned in your letter.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

TRUSTEES—COMPENSATION.

Tallahassee, Fla., August 28, 1919.

Dear Sir:—

I am in receipt of your letter of the 23rd instant, and note what you have to say.

Replying to your inquiry, I beg to advise that Section 804, General Statutes, 1906, provides that the compensation paid trustees should be paid out of the County Treasury. I take it from this provision of law that the payment of the compensation for the trustees should be made out of the general county fund.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

SHERIFF'S FEES—JURY VENIRE.

Tallahassee, Fla., September 29th, 1919.

Dear Sir:—

I am in receipt of your letter of the 22nd instant, in which you ask, if the Sheriff is entitled under the law to a fee of five dollars for executing a petit jury venire in the County Judge's court.

Replying to your inquiry I beg to advise that the provisions of law involved read as follows:

"Venire, grand or petit jury, executing.....\$5.00."

While I am rather inclined to the view that the Legislature only intended that this provision apply to petit juries for Circuit Courts, yet there is no limitation in the language used, therefore, I am unable to say that it does not apply to executing a petit jury venire in the County Judge's Court.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

SHERIFF—FEES—MILEAGE.

Tallahassee, Fla., October 13, 1919.

Dear Sir:—

I beg to acknowledge receipt of yours of the 9th inst., asking me to advise you whether the Sheriff is entitled to a mileage fee of $12\frac{1}{2}c$ per mile each way for himself and $12\frac{1}{2}c$ per mile one way for prisoners conveyed to the State Industrial Schools.

In reply thereto I beg to say that I have recently had occasion to pass upon the validity of that provision of the new Sheriff's Compensation Bill which is Chapter 7886, Laws of 1919, which provides, for counties of forty thousand population or less, according to the 1915 census as follows:

"State Prison and Industrial School for Boys and Girls: Conveying prisoners to, \$4.00 per day for himself and \$2.00 per day for each guard actually necessary, the necessity to be determined by the Comptroller. The State will furnish transportation."

I reached the conclusion that the provision to the effect that the State would furnish transportation is ineffective for two reasons,—1st, that it is violative of the Constitution and 2d, because no appropriation was made therefor.

However, the provisions of the statute are in my opinion valid and fix the compensation to be paid Sheriffs by the proper counties. It is my opinion that for conveying a prisoner to either one of the Industrial Schools the Sheriff would be entitled to \$4.00 per day for himself and actual transportation for himself and the prisoner.

You no doubt are aware that the duties of my office do not require me to render opinions in such matters as this and that the views above expressed are purely unofficial and not intended to be binding.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

POLL TAX—EX-SERVICE MEN NOT EXEMPT.

Tallahassee, Fla., October 22, 1919.

Dear Sir:—

I am in receipt of your letter of the 20th instant with reference to the provisions of Chapter 7926, Acts of 1919, relative to the exemption from payment of poll tax of electors who are or have been in the service of the armed forces of the United States, and note that you desire my opinion thereon.

Replying to your communication, I beg to advise that I understand from this provision of law that it was intended to permit any elector who, by reason of his absence in the armed forces of the United States, is unable to pay his poll tax on account of his absence from the county herein he is entitled to vote during the time when he may pay such tax under the general law. In other words if a soldier or sailor be at home during the time of an election on furlough, or having received his discharge at a date too late to pay his poll tax as provided by the general law, such soldier or sailor would be entitled, upon his filing affidavit as provided in the law, to vote without payment of a poll tax.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COSTS—CRIMINAL CASES.

Tallahassee, Fla., November 28, 1919.

Dear Sir:—

Replying to yours of the 25th inst., I beg to say that in my opinion jury fees in criminal cases in county courts

are not part of the costs to be taxed to defendant upon conviction.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

CITIZENSHIP—QUALIFICATION TO HOLD
 OFFICE.

Tallahassee, Fla., December 5, 1919.

Dear Sir:—

I am in receipt of yours of the 2nd instant asking:

1. Does an American-born woman, who has married a foreigner, still retain her claim and privileges as an American citizen?

2. Can she legally be appointed to any city, county, or State position connected with the Department of Education and Public Instruction?

3. Would divorce restore to her the claims and privileges she formerly enjoyed as an American-born citizen?

Replying in answer to the first question, I beg leave to say that an American-born woman marrying a foreigner takes the nationality of her husband, and has only such rights as he would have, except that such marriage would not affect her property rights.

In answer to the second question, I think she would not be eligible to appointment to any civil office.

In answer to the third question, I beg to quote the Act of Congress of 1917, as follows:—

“Any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may re-

sume her American citizenship, if abroad, by registering as an American citizen, within one year, with the Consul of the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein."

Since the duties of my office do not require, or contemplate that I should give advice to private individuals upon matters of this sort, I am not permitted to charge you a fee, but beg to suggest that the views expressed above are purely unofficial.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

LICENSE—MOTOR VEHICLES.

Tallahassee, Fla., December 23, 1919.

Dear Sir:—

I have your letter of December 19th, to which is attached copy of communication from Robt. C. Alston, General Attorney to Mr. E. M. Williams, Vice-President, Atlanta, Ga., dated December 27th, 1918. Also copy of communication from Kay, Adams & Ragland, of Jacksonville, to Mr. R. H. May, Agent, Southern Express Company, Jacksonville, Fla., dated October 9th, 1917. All pertaining to the question of whether or not the express company should pay the registration fee provided for in Chapter 7275, Laws of 1917, as amended by Chapter 7737, Acts of Special Session of the Legislature, 1918.

Replying to your communication, I beg to advise that under my view of the law, the Express Company should pay the registration fee required under the provisions of the said Chapter 7737.

The provisions of Chapter 6421, Laws of Florida, Acts of 1913, is a general law providing for an occupational license for engaging in or managing any business, profession or occupation. The proviso in Section 22 of this Act with reference to express companies relates solely to the kind of license tax or occupational tax provided for therein. The registration fee provided for motor vehicles in Section 6 of Chapter 7275, as amended by Chapter 7737, is not such a tax as was contemplated in Chapter 6421, nor was it in my opinion the intention of the Legislature that the proviso in Section 22 thereof "That no other or further license taxes shall be collected for State and county purposes from any such express company," should be included therein. However, if it could be held that the registration fee provided for in Section 6 of Chapter 7275 as amended by Chapter 7737 was such a tax as was sought to be included in the proviso of Section 22 of Chapter 6421 relating to express companies, the second Section of Chapter 7737, which provides "That all laws and parts of laws in conflict with this Act be and the same are hereby repealed," would under the rules of construction of statutes as laid down by the courts have the effect of repealing that part of Section 22 of Chapter 6421, which exempts express companies from other or further license taxes for State or county purposes.

I think that after this matter has been given thorough consideration by your attorneys, that they will reach the conclusion which I entertain, that the express companies should register and pay the registration fee provided for by Section 6 of Chapter 7275, as amended by Chapter 7737.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CLERK CRIMINAL COURT OF RECORD—COM-
PENSATION.

Tallahassee, Fla., December 26, 1919.

Dear Sir:—

I have your letter of the 15th inst., with reference to the provisions of Chapter 7334, Laws of Florida, Acts of 1917, fixing the compensation of county officers who are now paid in whole or in part on the basis of fees or commissions, and note that you have been requested by the Clerk of the Criminal Court of Record to ask for my construction of this law, as to whether the compensation of the Clerk of the Criminal Court of Record, who is also Clerk of the County Court, should be computed on the basis of two separate offices or only one.

Replying to your communication I beg to advise that it was evidently the intention of the Legislature in enacting Chapter 7334, Laws of Florida, Acts of 1917, to fix a basis for the compensation of county officials for the duties they performed, not taking into consideration the fact whether under the Constitution and laws of the State they performed the duties of more than one office. While the office of Clerk of the Criminal Court of Record and Clerk of the County Court carry with them duties independent of each other, yet under the provision of the Constitution which makes the Clerk of the Criminal Court of Record, Clerk of the County Court would, it seems to me, have the effect of placing the person holding these offices in the same position in view of the provisions of Chapter 7334 as if he held only one office, and that his compensation should be fixed on the same basis as if he held only one office.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE ATTORNEY—FEES IN BAIL BOND
ESTREATURES.

Tallahassee, Fla., January 6, 1920.

Dear Sir:—

Replying to yours of the 31st ult., to which are attached copies of letters to you from the Comptroller and the State Attorney of the Fourth Judicial Circuit in regard to the fees of State Attorneys in bail forfeiture proceedings, I beg to advise that in my opinion Section 1794 is to be construed as entitling State Attorneys to a commission of ten per cent "on account of any claim prosecuted or compromised" by them, which means, as I take it, any claim which comes into the hands of the State Attorney for the purpose of prosecution, and as to which he has the authority to make a compromise.

There being two methods of procedure by which the amount of the penalty of bail bonds may reach the proper treasury, (1) by suit, and (2) by estreature.

I am of the opinion that in the former case State Attorneys are entitled to a commission, which they may retain from the amount collected, or, if preferred, may pay in the full amount to the proper depository and render bill for commission.

In the latter case, I am of the opinion that the right to the commission accrues when and only when it becomes necessary for the State Attorney to represent the State in contesting cases upon the estreature of bail bonds.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

SHERIFFS' FEES.

Tallahassee, Fla., March 3, 1920.

Dear Sir:—

I have your letter of March 1st with reference to fees and compensations allowed Sheriffs for going beyond the limits of the State after a prisoner.

Replying to your communication, I beg to advise that the law provides that the Sheriff shall receive the sum of five cents per mile and his actual and necessary expense paid out on account of returning the prisoner to the State.

As I understand this provision of the law, the Sheriff will receive five cents per mile for himself going after the prisoner and five cents per mile for himself and five cents per mile for the prisoner in returning him, and in addition thereto, his actual necessary expense going and returning.

The five cents per mile allowed, as I understand, is to cover the railroad fare.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

ELECTIONS—PRIMARY ELECTIONS.

Tallahassee, Fla., March 10, 1920.

Dear Sir:—

I have your letter of the 8th instant asking several questions with reference to the operation of the Primary Law.

Replying to your communication, I beg to advise that Section 20 of Chapter 6469, Acts of 1913, provides that the Executive Committee of each political party, for the purpose of meeting their legitimate expenses and to maintain their party organizations, may levy assessments upon such candidates, as are required by Section 24 of this Act, to pay filing fees; that such assessment in the case of candidates for State office is to be made by the State Executive Committee; that in the case of county candidates it is to be made by the County Executive Committee, and shall not be more than two per cent. of the annual salary or compensation of the office sought. Under this provision of the law, the County Committee may levy an assessment against candidates for the purpose of defraying the expenses of the committee, and if an assessment is made by the County Committee the candidates should pay this assessment to the treasurer of the committee and this fund is kept by the committee. If there is any unexpended balance, after the primary election has been held, it is within the power of the committee to return to the various candidates such proportion thereof as the committee may deem best or advisable.

Under the provision of Section 24 of the above Act it is provided that a filing fee of three per cent. of the annual salary or compensation of the office sought by the candidate shall be paid in the case of State candidates to the Secretary of State at the time he files his sworn statement that is provided for in Section 22, and if the State Executive Committee has levied an assessment against such candidates when such candidates file the statement provided for in Section 22 and transmit to the Secretary of State the three per cent. assessment provided for in Section 24 he should also at the same time forward to the Secretary of State his receipt showing that he had paid to the State Executive Committee the assessment made by it.

In the case of county candidates, the County Committee has the same authority to levy the assessment as has the State Committee, and such assessment, if any is made by the County Committee, should be paid to the Treasurer of the County Committee, and the three per cent. filing fee as provided for in Section 24, above mentioned, should be paid to the Clerk of the Circuit Court at the time he files the sworn statement with the Clerk as provided for in Section 22, together with his receipt from the County Committee, that he has paid the committee assessment if any has been levied. The three per cent. filing fee provided for in Section 24 is paid into the County Treasury by the Clerk of the Circuit Court and cannot thereafter be disturbed.

Application should be made to the Secretary of State for all blanks required under this Act.

Section 26 provides that county candidates must qualify not less than twenty days before the primary.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

TAX SALE CERTIFICATES—REDEMPTION.

Tallahassee, Fla., March 23, 1920.

Dear Sir:—

I beg leave to acknowledge receipt of yours of the 20th instant, in reference to redemption by the owner of tax-sale certificates held by the Clerk of the Circuit Court for the State which have been purchased during the current year under Chapter 7806, Acts of 1919, which letter is accompanied by a copy of a letter to you from Hon Ernest Amos, Comptroller.

Replying to your communication, I beg to advise that I entirely agree with your views and those of the Comptroller.

Purchasers of tax certificates as above mentioned are entitled to recompensation according to the provisions of Section 576 of the General Statutes, which, in effect, provides that the owner may, at any time before the execution and delivery of the tax deed, redeem his land by payment to the Clerk of the Circuit Court of the full amount paid out by the applicant for the tax deed under other provisions of the statutes, and in addition thereto eight per cent. of such total amount. In other words, the purchaser is entitled to a return of his money plus eight per cent.

The object of Chapter 7806 was not to place additional penalties or burdens upon the delinquent owner, but was to get the enormous quantities of land in the State upon which tax sale certificates were held by the State, and which were, while so held, not bearing their proportion of the tax burden, back on the tax books so that they would be taxable. This object the Legislature sought to attain by remitting some of the theretofore onerous interest charges and thereby making the redemption of such tax sale certificates more attractive, or at least less burdensome, and by permitting the purchase of such certificates without so great an outlay of money. At the same time, in order to expedite the return of such lands to the tax books as tax-paying property, the Act was intended to incite the owner to prompt action to prevent the title to his land from passing to another. The proposition was also perfectly fair and equally as attractive to the purchaser who, if the lands are not redeemed within the time necessary to perform all the acts prerequisite to his right to a deed, may become the owner of the lands for a mere nominal consideration, or, if redeemed, for the same period, to receive a very liberal premium upon his investment, which might be as much as at the rate of

96 per cent. per annum, the more prompt his action looking to the receipt of a deed the greater his return upon his investment.

I think the law is hardly capable of any other construction, and I have set forth what appears to have been the end aimed at in order to show the reasonableness of your position and that of the Comptroller.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CC—Hon. Ernest Amos,
Comptroller.
For his information.

POLL TAXES—MAY PAY, THOUGH TAX ROLL NOT
COMPLETE.

Tallahassee, Fla., March 15, 1920.

Dear Sir:—

Upon the suggestion of a prominent citizen of your county I have investigated the question as to whether or not you may legally accept payment of poll taxes although the tax roll containing the assessment has not been completed and turned over to you in regular course.

I desire to say that after going into the matter I am of the opinion that you may legally receive these taxes in view of the fact, among others, that the payment of poll taxes is a necessary prerequisite to the right of an elector to vote; and in view of the further fact that the amount is definite and certain and does not depend upon any action of the equalizing board of the county

but is due and payable by each citizen against whom the same is legally assessable regardless of any action by the equalizing board.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

POLL TAXES—TIME FOR PAYMENT.

Tallahassee, Fla., May 15, 1920.

Dear Sir:—

Replying to yours of the 11th inst., with reference to the payment of poll taxes, I beg to advise that some weeks ago this office rendered an unofficial opinion which was sent out to each of the Tax Collectors of the State to the effect that May 22nd was the last day to pay poll taxes.

This opinion was based upon the language of the Supreme Court in the case of *State ex rel. vs. White*, 73 Fla. 426, in which the Supreme Court said that the month preceding the day of the election meant a period of time elapsing *between* a given date (June 8th, 1920) and the corresponding date of the preceding month by name (May 8th, 1920).

Applying this language in its ordinary meaning it will be seen that the period of time *between* May 8th and June 8th begins at the close of the last hour of May 8th and ends with the last hour of June 7th and the second Saturday in that period is May 22nd.

I am aware that there is a great diversity of opinions in this connection, but I am still of the opinion heretofore expressed.

There is, however, no doubt that poll taxes paid on or before May 15th, are paid in time.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

ELECTIONS—CAMPAIGN EXPENSES— NAME ON
TICKET.

Tallahassee, Fla., May 17, 1920.

Dear Sir:—

Replying to yours of the 15th inst., I beg to advise that by the most liberal construction of the law the first statement of campaign expenses should have been filed by midnight of May 14th. There is no rule of construction recognized by the courts which would permit the inclusion of June 8th to make this calculation.

In view of the law, as I understand it, the failure to file the statement within the time named will prevent the printing of the candidate's name on the ticket.

Of course I cannot advise that the candidate's name be omitted from the ticket, because I have no authority to do so and my advice would not be binding, but I do think that the officials who have the duty of making up the ticket would be guilty of a violation of the law if they placed the candidate's name on the ticket under the circumstances.

I do not know who this candidate is and I certainly regret that anyone should be placed in this position, but your inquiry is not the only one we have received, and this candidate is not the only one who will be deprived of the right.

Much as I regret it, I deem it my duty to advise you the law as I understand it.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

NAVAL RESERVATION—RESIDENT OF.

Tallahassee, Fla., May 19, 1920

Dear Sir:—

Replying to yours of the 15th inst., I beg to advise that the courts of the country have held that a resident of a naval reservation is not a resident of any County or State of the United States.

Since, to entitle one to register and vote in State elections in Florida he must be a resident of the State for twelve months and of the county six months, I am of the opinion that you cannot register and vote.

I very much regret that you will be unable to exercise the franchise but feel it my duty to advise you as to the law as I understand it.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

COUNTY OFFICERS—COMPENSATION.

Tallahassee, Fla., July 23, 1920.

Dear Sir:—

Replying to yours of the 19th inst., with reference to Chapter 7334, Acts of 1917, I beg to advise that this law

does not in any manner change the amount or method by which officers affected by the Act are compensated. Under the law, you and all other officials whose compensation is based upon fees or commissions will continue to be paid from the same sources as heretofore, but the amount which such officials may receive for their own use is limited by the Act mentioned.

You have, no doubt, seen a copy of a letter written by this office which has been sent out in circular form all over the State by the Comptroller. This letter in effect states that the law is not clear as to what the official shall do with the excess of receipts over and above their own compensation and that of their deputies, and that the Board of County Commissioners have no authority to pay any deputies or assistants from the County Treasury.

It is my understanding of the law that the official shall receive into his hands the same compensation he has heretofore received, out of which he is to pay his deputies and assistants, the number of which and the compensation of which are fixed by the Boards of County Commissioners. From the remainder, the official for his compensation is to be guided by the schedule fixed in the law. As before stated, the law does not prescribe what shall be done with what then remains.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

SCHOOLS—SALARY OF TEACHERS.

Tallahassee, Fla., August 12, 1920.

Dear Sir:—

Replying to yours of the 7th instant, I beg to advise that I see no objection to the Trustees of a Special Tax

School District issuing to teachers evidences of indebtedness which would show them entitled to payment for services rendered when the funds are in hand.

You understand, no doubt, that all contracts with teachers and payments to the same are controlled by the County Board of Public Instruction, and that the approval of that Board is necessary before any payment can be made. If it is satisfactory to your County Board, I see no objection to your Board of Trustees making such evidences of indebtedness negotiable in order that the teachers may realize upon the same in advance of their payment in full when the County is in funds.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

COUNTY OFFICERS—SALARIES.

Tallahassee, Fla., November 9, 1920.

Dear Sir:—

Replying to yours of the 8th instant, asking me to further construe Chapter 7334, Acts of 1917, with reference to the Clerk of the Circuit Court as Clerk of the Board of County Commissioners, I beg to advise that, in my opinion, the salary fixed by the Board of County Commissioners should be construed as a part of the net income.

By General Statutes 776, the Clerk of the Circuit Court is the Clerk and Accountant of the Board of County Commissioners, and Section 1840 provides that his salary as such shall be fixed by the Board upon a basis proportionate to the compensation allowed for their services.

Chapter 7334 applies to each County Officer paid "in whole or in part" on a fee or commission basis.

Clerks of the Circuit Courts are the only county officers whose compensation is in part by fees. These officers are Clerks of the Boards of County Commissioners and receive a stated compensation as such ex officio. Sheriffs, Tax Collectors and Tax Assessors are compensated wholly by fees. In some cases County Judges receive stated salaries as Juvenile Court Judges, or as other ex-officio officers, but I think it may be safely assumed that the Legislature in enacting Chapter 7334 had in mind the office of Clerk of the Circuit Court which carries with it, as is a matter of fact most commonly known the offices of Clerk and Accountant of the Board of County Commissioners, the emoluments of which are fixed by the Board and used the language "in whole or in part on the basis of fees of commissions" with primary regard for that office.

Another point that I venture to suggest for your consideration is that the objects sought by the statute were a curtailment of the excessive incomes received by some county officers and the payment of such excess into the County Treasuries.

If the Clerks of the Circuit Court were allowed to retain their salaries as Clerks and Accountants of the Boards of County Commissioners, which are fixed at the discretion of the Board, it would be an easy matter for the purpose of the Statute to be evaded since County Commissioners might fix such a salary as would make up the difference between the compensation under the old law and that under the new which would necessarily come from the County Treasury.

I wish you to understand, however, that the writer expresses the foregoing views purely in response to your request and with a view to aiding you in a proper con-

struction of the law, and not with any desire to substitute his opinion for yours by which alone your clients, the Board of County Commissioners, if at all, are bound.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

ELECTIONS—CAMPAIGN EXPENSES.

Tallahassee, Fla., May 27, 1920.

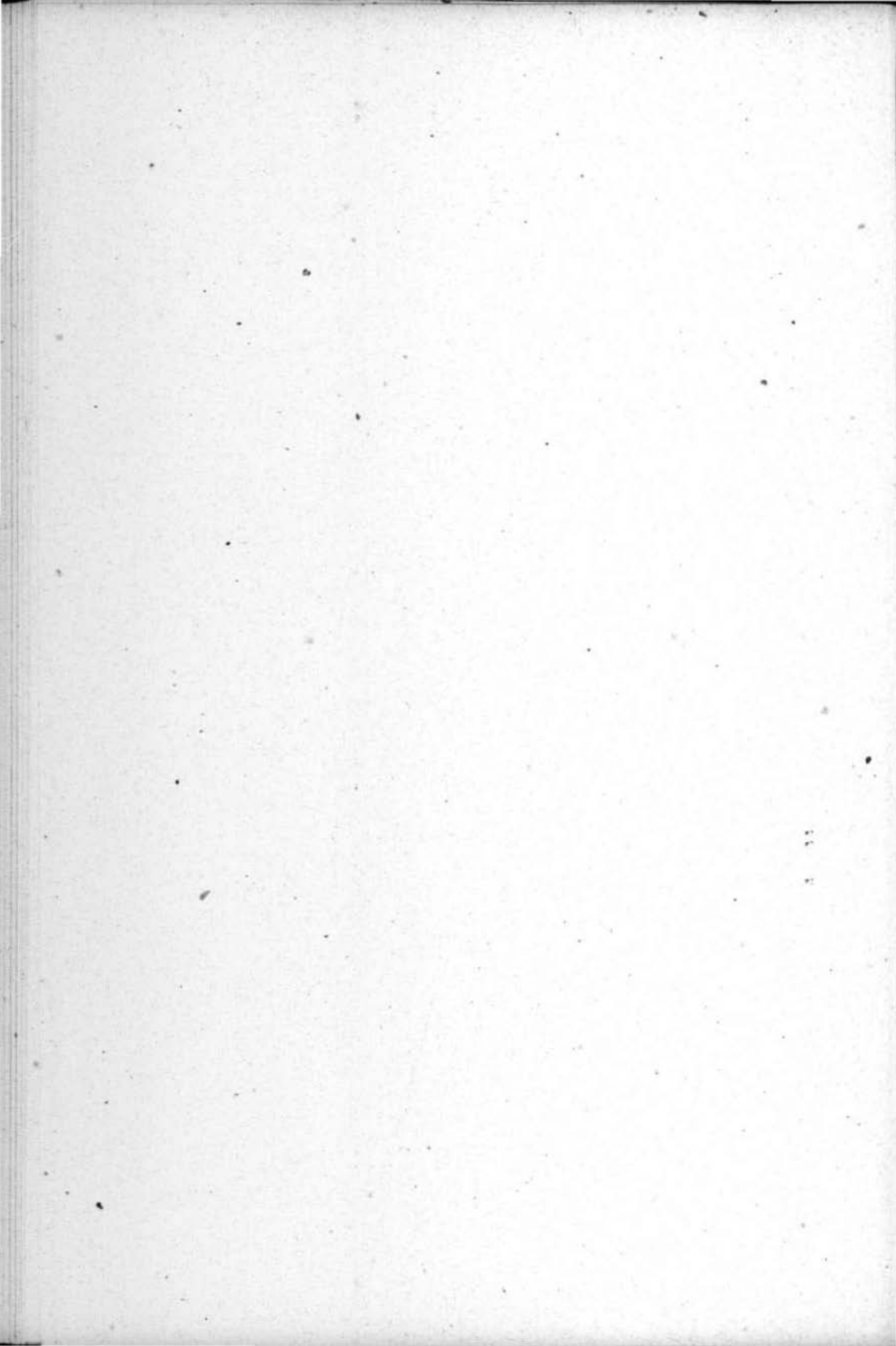
Dear Sir:—

Replying to yours of the 21st inst., I beg to say that this office has heretofore concurred in the view adopted by the Secretary of State that the day of the actual receipt in his office of campaign expense statement is the date of filing as contemplated by the statute and that the placing of a statement in the Post Office is not a filing.

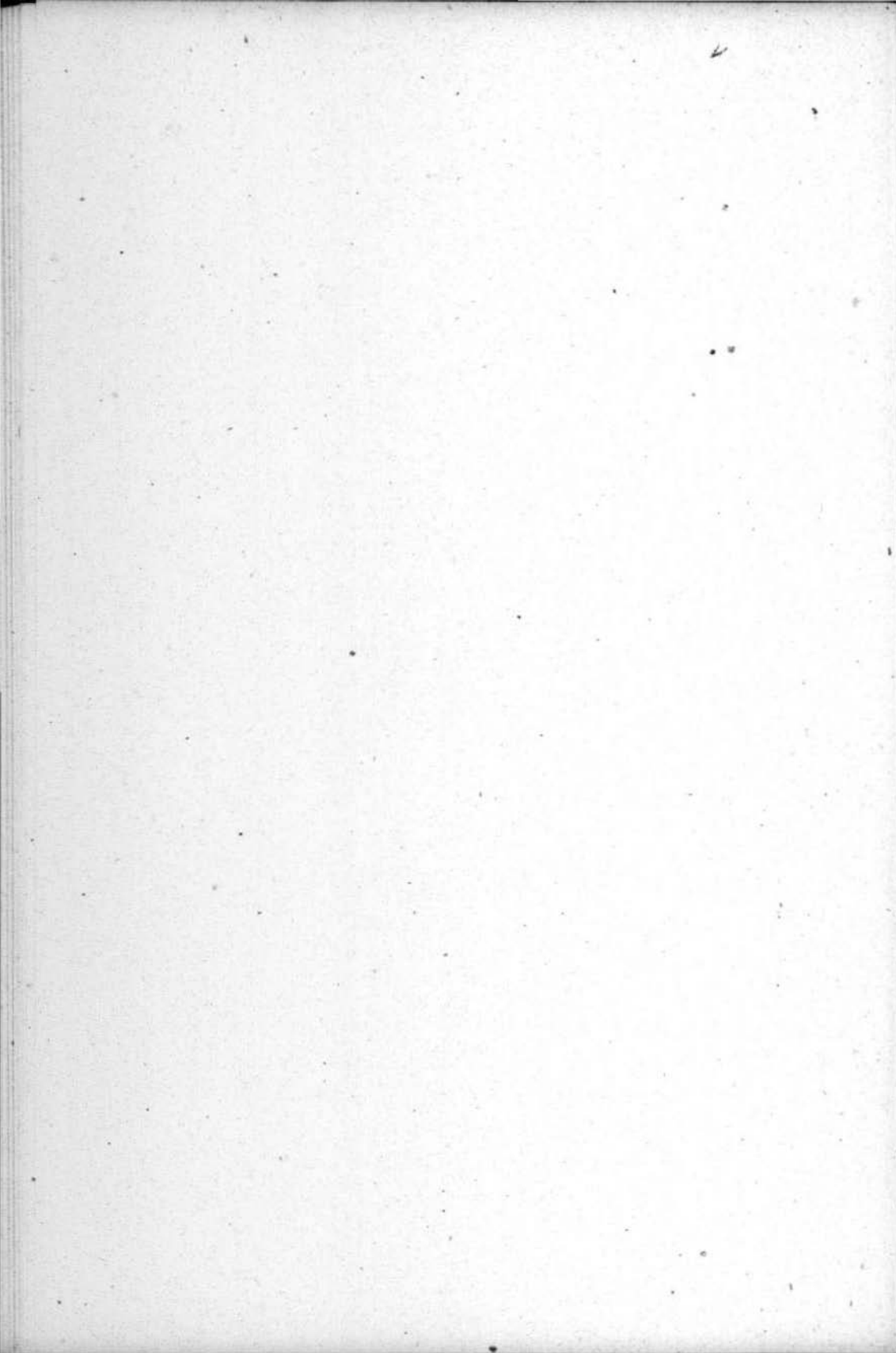
Yours very truly,

VAN C. SWEARINGEN,

Attorney General.



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